S. Hrg. 99-238

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 3067

AN ACT MAKING APPROPRIATIONS FOR THE GOVERNMENT OF THE DISTRICT OF COLUMBIA AND OTHER ACTIVITIES CHARGEABLE IN WHOLE OR IN PART AGAINST THE REVENUES OF SAID DISTRICT FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1986, AND FOR OTHER PURPOSES

OFFICE OF THE MAYOR
OFFICE OF THE U.S. ATTORNEY
METROPOLITAN POLICE DEPARTMENT
SUPERIOR COURT
DEPARTMENT OF CORRECTIONS
BOARD OF EDUCATION
PRISON SYSTEM
NONDEPARTMENTAL WITNESSES
COURT SYSTEM
PUBLIC SCHOOLS

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DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, JANUARY 2, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 1:35 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senator Specter.

DISTRICT OF COLUMBIA

OFFICE OF THE MAYOR

STATEMENT OF HON. MARION S. BARRY, JR., MAYOR

ACCOMPANIED BY:

JAMES PALMER, DIRECTOR OF CORRECTIONS
WILLIAM D. GOLIGHTLY, ASSISTANT DIRECTOR OF CORRECTIONS
SHIRLEY WILSON, DIRECTOR, OFFICE OF CRIMINAL JUSTICE PLANS AND ANALYSIS

OPENING STATEMENT OF SENATOR SPECTER

Senator SPECTER. We will begin this hearing of the District of Columbia Subcommittee of the Appropriations Committee on the subject of the District of Columbia's jails and prisons.

I very much appreciate the availability of Mayor Barry and U.S. Attorney diGenova on this hearing at this time, and these are obviously going to be busy days, and the subcommittee had wanted to schedule this hearing before the session of the Senate began and really at the earliest possible time.

The reason for seeking the hearing at an early date arises from the concerns about the population of the District jail, the continuing concerns at Lorton, and specifically an issue which was raised at a hearing held last month by this subcommittee on the application of the new career criminal bill. The comment was made by Judge Ugast when exploring the issue of revocation of probation violators and going to jail that, as Judge Ugast put it, the jails were already overcrowded, reflecting a concern by Judge Ugast about the wisdom or propriety of sending people to jail in a context where the jails were already overcrowded.

This subcommittee has been very concerned, as everyone knows, that is, the Mayor knows, the city administration knows, and the U.S. attorney knows, about the people who are on probation or on parole and are then charged with other serious offenses where there is valid cause, really a necessity to revoke probation or parole. The issue of jail space is one of tremendous importance as it relates to incarcerating those who have violated probation and parole and as it relates to the overall criminal justice system.

And it is from this point of view that the subcommittee wants to move ahead to examine the issue at this time.

Congressman Stan Parris has requested an opportunity to testify which we, of course, said we would be pleased to have him here, but he developed a schedule conflict according to information provided to me just a few moments ago so he will not be present but will be submitting a statement.

At this time, if Mayor Barry is prepared, we will begin with you, Mr. Mayor. We are very pleased to welcome you back, again.

Mayor Barry, we are delighted to see you. We have just expressed seasons greetings to you from your trip back from Ethiopia, and the life of a mayor is never without problems. I received personal New Year's greetings from you yesterday on an ABC network news break while the football game was on. Maybe it was NBC evening news while the football game was being telecast last night, but you were there.

OPENING REMARKS OF MAYOR BARRY

Mayor BARRY. Thank you, Mr. Chairman.

Let me express my great appreciation to be able to testify before the subcommittee on such an important subject, and let me also thank you for your continuing support and understanding of our entire city government and your particular concern about our criminal justice system.

Mr. Chairman, as you know, we do have a criminal justice system board which is composed of members of the justice system, including the U.S. attorney. I am the chair of that board.

We met in December to review our progress. Mr. Chairman, just for the record, though, let me just say that, as you know, the District of Columbia is unique in the sense that we operate a detention center which is usually a function of a city or a State in terms of incarcerating those persons who are being held previous to being tried or holding people previous to being sentenced or, in some instances, held temporarily until they are sent to a State or Federal prison.

The District operates both a detention center and a prison, and sometimes those two situations are somewhat mixed up. They're not mixed up in your mind, but just for the public record here, we would like to differentiate between those situations.

Mr. Chairman, as you also know, the District of Columbia is under at least a dozen various lawsuits, many of which we have signed consent decrees with the various plaintiffs and their attorneys.

A number of those lawsuits limit the number of people that we can keep at any of our facilities.

INCREASING NEED FOR JAIL CELLS

Mr. Chairman, around the country the problem exists about jail cells needed for the increasing number of people who are being arrested and incarcerated.

Let me say that I, too, am concerned about that. Let me give you several comparative analyses as to what has happened in the District of Columbia. In 1974, if you include all the people who were in the detention center, both male and female, which came to 879, the detention rate at that time was 126 per 100,000 population.

Not to compare apples and oranges, you take each city, each county, or each State and calculate the rate per 100,000 of the population. That way you are comparing apples and apples. So at that time we had a detention incarceration rate of 126 people per 100,000.

Then we had about 2,432 people who were sentenced and incarcerated either at Lorton or at the Federal Bureau of Prisons. This gave us at that time a total of 3,311 incarcerated.

Senator SPECTER. You say 2,432 were sentenced.

Mayor BARRY. Yes, Senator, 2,432.

Senator SPECTER. And these were where, Mayor Barry?

Mayor BARRY. 2,071 were at the various complexes at Lorton and various halfway houses and 361 were in the Federal Bureau of Prisons. The Federal Bureau of Prisons takes D.C. prisoners into the Federal system if sent there by a judge. We pay them a per diem rate per person.

If you add those together you get 2,432, which would give you a sentenced incarceration rate of 296 persons per 100,000 population.

Now, Mr. Chairman, you look at the first 6 months of 1984. We have doubled the detention rate, 1,638 males, 243 females, to give you about 1,880. The interesting number here as compared to 126 detained inmates per 100,000 in 1974, the current detention rate is 298. Almost, as you can see, tripling what we did in 1974.

Then we look at the sentenced population and compare the 2,071 we had in 1974 to the 3,636 now and again almost double the rate and numbers at Lorton. But the big number is the Federal Bureau of Prisons where we only had 361 persons in 1974. In 1984, for the first 6 months, we had 1,305 in Federal prisons.

DISTRICT PRISONERS SENT TO FEDERAL PRISONS

Senator SPECTER. Mayor, when you talk about prisoners in the Federal system, are you saying——

Mayor BARRY. These are D.C. prisoners. These are persons who committed D.C. non-Federal crimes; armed robbery, grand larceny, auto theft, all of the local crimes.

Senator SPECTER. And the District contracts out to have them held in Federal prisons?

Mayor BARRY. Well, the judges have the option of sending certain kinds of prisoners to Federal institutions, if there is room, and the Federal Bureau of Prisons has agreed to take as many of those persons who judges have sent out that they have room to accommodate.

Senator SPECTER. I do not understand that or I do not agree with it. If you have someone convicted of an offense under the District of Columbia Criminal Code, not a Federal offense, but the District of Columbia Criminal Code, are you saying, Mayor Barry, that a D.C. judge has the authority to sentence that person to a Federal penitentary, because if you do, that is contrary to my experience?

Mayor BARRY. Mr. Chairman, technically, every person convicted of a felony in the District of Columbia is technically in the custody of the Attorney General of the United States of America, and what has happened over the years, the Attorney General has delegated certain power and certain responsibilities to the Mayor, and I, in turn, to the Department of Corrections.

So technically all of these prisoners could be sent to Federal institutions. I will give you a couple of examples. During 1977 when we had the very difficult situation of the Hanafi takeover, it was the view of the judge who tried those cases that those defendants should be separated throughout the country for their own safety and for the safety of the community.

This has been the practice. Mr. Palmer may wish to speak on it, but since I have been around here, which has been about 20 years, that kind of arrangement has existed where a superior court judge can ask the Federal Bureau of Prisons for a designated place to send D.C. prisoners.

We reimburse the Bureau of Prisons for housing these people. I think last year the cost amounted to $20 million. They send us a bill each quarter, and we send them the money.

I happen to agree with that system, Mr. Chairman, in the sense that it reduces the likelihood of conflicts among inmates. Unlike the State of Pennsylvania where you have several State prisons and you can separate people who have known each other or people who have committed crimes together, and thus people who may kill each other for having testified against each other, that protection is often missing in our system.

In Washington, as you very well know, we only have Lorton with the eight institutions down there, and it is rather difficult sometimes to take dangerous persons or persons who may harm each other and keep them together.

I happen to agree that this is a good system of cooperation between the Federal Bureau of Prisons and the District of Columbia.

TECHNICAL CONTROL BY ATTORNEY GENERAL

Senator SPECTER. So what you are saying is that of these 1,305 individuals who have been convicted of crimes in the District of Columbia, even if they are burglary or fraud or whatever the offense may be, aggravated assault and battery, they may be sentenced to Federal institutions at the cost of the D.C. budget, because technically the Attorney General has control of the system since he is the prosecutor for the District?

Mayor BARRY. That is right.

Senator SPECTER. You have a lot of people in jail, Mayor. There is no doubt about that.

Mayor BARRY. That is why I want to bring that point out to you. Mr. Palmer wants to add a little bit to that, if you do not mind, Mr. Chairman.

DECLINE OF MORE PRISONERS BY FEDERAL BUREAU OF PRISONS

Mr. PALMER. Senator Specter, the Bureau of Prisons has notified me that they are no longer going to take prisoners. Therefore, we have been on the receiving end.

As you know, they did away with the Youth Corrections Act. They returned approximately 90 youthful offenders. However, I have received correspondence, and their intentions are to ship some more back.

Also, there are a number of prisoners who are severe disciplinary problems when they are in the limited number of institutions that we have. Therefore, we have had a number of them sent to the Federal Bureau of Prisons.

However, in personal meetings with Mr. Carlson and the Bureau of Prisons officials, it is becoming exceedingly difficult for us to negotiate these types of transfers, because the Bureau of Prisons is roughly 30 percent over while we are 60 percent over.

So therefore, the luxury, and it was somewhat of a luxury, we no longer have. When I had all of the youthful offenders, I had to go to court to explain the situation. I met personally with Mr. Carlson in an effort to try to expand or to shift some prisoners. We have done quite a bit of that. We have become proficient at that.

Our intentions were to see if we could offset the large number of youthful offenders by sending felony offenders to the Federal prisons. However, we were not able to negotiate the numbers successfully, and therefore, we had this large number of youthful offenders that were returned to the system.

HIGH INCARCERATION RATE

Mayor BARRY. Mr. Chairman, to emphasize my point, I again would like to use a comparative analysis. When you go from 1974, with a total of 3,307 people incarcerated, to a total now of 6,821, you must take into consideration the fact that our incarceration rate, 558 prisoners per 100,000 for the District of Columbia, is much larger than the average incarceration rate for the 50 States, which is approximately 167 prisoners per 100,000 population.

We have an extraordinarily high incarceration rate; the highest in the country. Also, according to Bureau of Justice Statistics data, inmates convicted of felonies in the District serve an average of 42.6 months in prison as compared with 15.4 to 32.8 months in 11 States reviewed, including the State of Pennsylvania.

This contrast in time actually spent in prison was very much evident for drug offenses in the District where the average time served was 43.4

months. We have been hard on crime. Reported crime has declined in the past 3 years.

The police department arrested over 27,000 people last year. That does not mean that we are unusual. It does not mean that we are the crime capital of the world, but it does mean that we are experiencing a very serious problem.

COST OF INCARCERATING A PRISONER

I think that we have managed this problem very, very well. Since 1980, we have added over 1,800 new prison beds to our system. It averages us some $35,000 to $40,000 per bed. It costs us about $16,000 a year to keep one person incarcerated.

If you look at the Corrections Department's budget, it has increased probably more than almost any other budget in my administration. We have spent $28 million in capital improvements alone.

Senator SPECTER. You have had some help from this subcommittee on that, Mr. Mayor.

Mayor BARRY. I appreciate that.

Notwithstanding the educational initiative, just the regular portion of the budget, as proposed by the city to the subcommittee, this increase has been rapid. In considering the educational component, which we certainly appreciate, that adds an additional amount.

I was referring to the basic appropriated budget as submitted to the council and this subcommittee.

COMPARATIVE INCARCERATION FIGURES

Senator SPECTER. Mayor Barry, you say Washington, DC, is not the crime capital. What are the comparative statistics as to incarceration per 100,000? How does Washington, DC, compare with 558 per 100,000 incarcerated? Where does that rank among, say, the 50 States?

Mayor BARRY. I think the way you look at it, Mr. Chairman, is to compare the number of reported crimes per 100,000 people. That is how the FBI does it. They may compare 20 jurisdictions and if you are No. 20 that means you have the lowest reported crime rate per 100,000 persons. The last time, we ranked No. 17.

Phoenix, AZ, and Baltimore, and others are much higher in reported crimes. I think what it means in Washington, though, is that we are much better at, one, arresting those who commit crimes, and two, that—and Mr. diGenova can speak to this later—but out of those who go through the system, the conviction rates and incarceration rates are higher. That means we are doing a much better job, in my view, in apprehending criminals.

Senator SPECTER. Does any State have a higher incarceration rate than the District of Columbia?

Mayor BARRY. I do not think so. I am looking for that information. No.

Senator SPECTER. That is very important, Mr. Mayor, as we assess what are the needs of the District of Columbia in terms of prison space.

If no State has a higher incarceration rate, then the blunt fact is that we have a bigger problem here when it comes to dealing with the prison problem.

Mayor BARRY. Mr. Chairman, I guess there comes a time when policymakers such as yourself and myself have to examine what is a good balance between what you do about incarceration and what you do about crime; and overcrowding should be defined.

For instance, in the District jail, it is probably one of the most safe and secure jails in the country. They average about 75 square feet of space there which is, in some instances, a luxury compared to some other dilapidated and rundown places in the country.

We are going to get to the question, I an sure, during this hearing of additional beds, and I think you and I have a slightly different point of view on that as to what we do now.

I think we have enough beds at the present time to house the people who are in our system. We are going to open Occoquan Two in about 2 or 3 months to take about 400 people out of the District jail.

Again, the criminal justice system, in terms of the Department of Corrections, is spending $130 million a year. I think we need to look at some other alternatives to make sure that every criminal who commits a crime is apprehended and taken through the system.

But the question is once that happens, what happens to them next? If you look at some numbers, you find——

CAPACITY OF DISTRICT JAIL

Senator SPECTER. Mayor Barry, what is the capacity of the District jail?

Mayor BARRY. It depends on how you rate it, Mr. Chairman.

Senator SPECTER. I have statistics which show that the capacity of the District jail is 1,378.

Mayor BARRY. Mr. Chairman, let me indicate that you have 1,378 jail cells at the District jail. You can view its capacity in two ways. Judge Bryant has indicated we should not have pretrial detainees double-celled. There is not one person in the District jail now, to our knowledge, as a pretrial detainee, who is double-celled.

But there is nothing to say you cannot have sentenced prisoners double-celled. Many States, many cities—and you and I have visited the jail; we can go again—have two people to a cell. There is nothing illegal about that. There is nothing inhumane about that.

They have plenty of space. They just have two bunks there. They can move around. We have contained recreation centers. People can go out and play basketball. They go to the library, and they can read.

So I maintain that the District jail is not overcrowded in the true sense of overcrowded.

NUMBER OF PRETRIAL DETAINEES AT JAIL

Senator **Specter**. Mayor Barry, how many are being detained pretrial in the District jail with one person per cell?

Mayor **Barry**. As of today we had 792.

NUMBER OF POSTCONVICTION DETAINEES AT JAIL

Senator **Specter**. And how many, then, are being incarcerated in the District jail postconviction?

Mayor **Barry**. Without being sentenced? We have 412. They are single-celled also.

Senator **Specter**. Those are verdicts of guilty in but not sentenced?

Mayor **Barry**. That's right.

Senator **Specter**. Then how many are being sentenced?

Mayor **Barry**. There are 1,044.

TOTAL NUMBER IN DISTRICT JAIL

Senator **Specter**. So the total number in the District jail today is?

Mayor **Barry**. As of December 21, 2,248. We can give you the current.

Senator **Specter**. 2,248?

Mayor **Barry**. I am sorry. Today's count is 2,205. It goes up and down. We were down to 1,700, and every time you take it down it gets filled back up. But, again, Mr. Chairman, the point I wanted to make is that, in my view and in the view of Mr. Palmer, the District jail, certainly if you had your ideal situation ought to have 1,378 people.

DOUBLE-CELLING

Senator **Specter**. Well, as I read those statistics——

Mayor **Barry**. There is nothing wrong with double-celling people. There are some States and some counties that put four people to a cell.

Senator **Specter**. Do you think that is appropriate?

Mayor **Barry**. I have been to the District jail, Mr. Chairman.

Senator **Specter**. No; do you think it is appropriate to have four people to a cell?

Mayor **Barry**. No; I think it is appropriate for two.

Senator **Specter**. Are there some in the District jail now with three?

Mayor **Barry**. No.

Senator **Specter**. Let us see how those figures work out. If you have 1,378 cells, and 792 are pretrial detainees, that means you have 1,378, 792 are pretrial and they are one to a cell——

Mayor **Barry**. Doubled up they can hold over 1,400.

Senator **Specter**. I get 596 left.

Mayor **Barry**. And you double that. That takes up 1,000 people.

Senator **Specter**. But you got 1,456.

Director Palmer, do you have a comment?

Mr. **Palmer**. Senator Specter, what the Mayor is saying to you is we single-cell all of the persons who are pretrial. After that we double-cell persons and we also put persons on the floor in the dormitory space that we have at the facility.

So we can do that, and we have found that with 2,200 people we can manage it very well. We do not take up any of the recreation space and so forth, then, and we have the basketball courts that you and the Mayor visited that people can use for exercise and the day rooms.

Senator SPECTER. Some of the space, then, you are using as dormitory space?

Mr. PALMER. Yes, sir.

Senator SPECTER. What had the dormitory space been used for before it was used for dormitory space?

Mr. PALMER. We would have it for areas where people could go and use it for recreation, or as day rooms to sit. As you have been at the jail with the Mayor, the jail is a very spacious institution. It has the capacity of 1,378 cells, and in each cellblock unit, we have cells.

However, if, as the Mayor was saying, if we simply double-cell people, and everyone was in a double-cell at the jail, it holds 2,600 and some. And personally, Senator Specter, most institutions—and I too have visited a number of institutions—when you place two people in a cell—you can get experts in who I do not think can refute this—if a situation takes place, you only have two people in the cell to deal with from a security standpoint.

MAXIMUM CAPACITY WITHOUT BEING OVERCROWDED

Senator SPECTER. What is the maximum you can accommodate, Mr. Palmer, and still not be overcrowded, in your judgment?

Mr. PALMER. Well, Senator Specter, we went up to 2,400, and we began to experience a little difficulty. Ideally, the Mayor wishes for me to keep the jail near 2,200, and it is very, very manageable. You and he were there, and things were extremely comfortable then with the 2,200.

Some of the problems with the jail is the jail has a support capacity. It is a very secure institution, and when we have 2,200, it poses no problem as far as the feeding. We can get that done in an orderly fashion, and the Mayor has allowed us to make a number of improvements in that area.

We have the heated trays so that we can heat the food. It keeps the food hot as we serve it to the residents. We purchased these trays which are sanitary and heated.

We also did something, Senator Specter, that was highly unusual. The Mayor said that he wanted the food facilities inspected. We called Mrs. Thompson and had the facility inspected by the public health people. We passed the same as any restaurant would.

We fixed it up. The paint was fresh and dry and everything was clean to the Mayor's satisfaction and to the health inspector's satisfaction. That cost us a lot of time, effort, and money.

But we have a clean operating facility the same as the best of the restaurants in the city.

NUMBER OF PERSONS INCARCERATED IN DORMITORIES

Senator SPECTER. Director Palmer, how many people do you have incarcerated in dormitories now in the District jail?

Mr. PALMER. I do not have that exact figure, but I can furnish that to the committee. I can give you a daily breakdown from any day that you wish, Senator Specter.

Senator SPECTER. I just made a rough calculation, and figuring that you have 792 pretrial detainees, putting them into the 1,378 cells would mean that you had 596 cells left over.

Mr. PALMER. Yes, sir.

Senator SPECTER. And if each one of those held two, it would be 1,192, and you have 1,456 postconviction or sentenced. So you would have at least 264 in dormitories.

Mr. PALMER. Not necessarily so, Senator.

Senator SPECTER. Why not?

Mr. PALMER. We try to be very honest about everything. When we put people into double cells and we put people in the dormitory, for example, we might have as many as 14 cells that are open with no one in them.

Now, we have to operate a safe and secure facility, and people do have to have the facility of restrooms to use so they can relieve themselves.

Senator SPECTER. So then you may have more in dormitories?

Mr. PALMER. Yes; if we put people on the floor, they must have the open cells so they can use them. We will have sufficient cells open so we will not have any health problems. Therefore, we will put them on the floor and we will have these cells open to accommodate the number of people that we have on the floor.

Senator SPECTER. About how many cells do you have so utilized?

Mr. PALMER. I do not have that exact count. I know we have had as many as 14 and 15, but I can get the breakout for you because we file it with the court on a monthly basis. We have to file with the court the population of the jail, the breakout, and how they are housed and so forth.

We file under *Campbell* v. *Magruder* all of this information. If you desire to have it, we can simply go back to the office and send copies to the committee. It is on file.

Mayor BARRY. Mr. Chairman, let me explain. You have been to the jail. The jail is probably architecturally the best design of any detention center I have seen in the country, and dormitory does not mean dormitory as such.

It means space where you put people with bunks and space them out, yet they are behind bars. Obviously, if I had a magic wand, we could wave it here. The ideal situation would be to have 1,378 people out there or less and have them in single cells.

But I think the Supreme Court just ruled, and others have ruled, that people who are sentenced can be treated differently from pretrial detainees. We are operating a jail, not that you suggested otherwise. It is not a country club. We have met every constitutional requirement in the land. If we had not, I am sure that by now Judge Bryant would have had Mr. Palmer and myself being occupants out there or certainly paying a high fine. We have not had that to happen yet.

All the plaintiffs' lawyers who are in these suits have, from time to time, raised a few questions and we have worked it through, but they understand the tremendous difficulty that we are facing here.

The number of correctional officers has increased tremendously. Our feeding bill has gone up tremendously, and I, too, would like for it to be down, but I think we are operating, under these difficult circumstances, very, very well.

I do not have the number but we can get them for you, but I think in the last 4 years escapes at the jail——

IMPACT OF PAROLE REVOCATIONS

Senator SPECTER. Mayor Barry, I do not quarrel with your assessment that you are operating them very well. For the moment I do not agree, but I do not quarrel with that. A concern that I have is that when I have hearings on revocation of probation and have a judge like Judge Ugast say to me, "There is no place to put people in jail," and have Judge Moultrie say that judges are not sentencing because there is insufficient space, I am concerned about the question of public safety in addition to the issue of the adequacy of the space for the treatment of those who are in detention.

I have another concern and that is the expected increased load when we start having revocations of probation, as we have every right to expect that they will increase, once the court starts to revoke probation when they have cause to do so, under procedures which they are putting into effect.

And the corollary, what is going to happen when the parole board starts to revoke parole on those convicts who are on parole who are committing new offenses where there is strong reason to believe that they are guilty of the new offenses and the parole ought to be revoked? Those are concerns that I have.

In terms of the job which you are doing, Mr. Mayor, and the job that Director Palmer is doing, I do not quarrel with that at all, but I am concerned about a number of factors. I am concerned about space to put people in jail who ought to be in jail, and I do think it is appropriate, too, putting aside the issue of whether these jails are country clubs which I don't think anybody says they are in any event.

Seventy-five square feet, even if there is one person, I do not know of any country club that has facilities like that. So that there is an appropriate inquiry as to the basic conditions for people who are so detained.

But my concern looks down the road on the enforcement of the career criminal statute, the revocation of probation and parole, to where we are heading.

Mayor BARRY. Mr. Chairman. we would like to submit for the record, after we compile the data. Mr. Chairman, I was not here when Judge Ugast testified. I do not know of any instance when a judge wanted to incarcerate someone but said there was no room to incarcerate them.

We do not know of any instance when the parole board has wanted to revoke parole that we have not taken the people and put them in jail. Obviously, things could be better, but I reject the notion that when these new regulations from parole and the judges get tougher on parole and probation, that we are not going to have adequate and suitable facilities to house these people.

As I said earlier, we are going to open up another facility for 400 people in February. That is going to relieve some pressure at the jail. But I do not know of any time the judges have asked us or the marshals to take somebody out to the jail and put them there and they said that we cannot do that.

RELEASES DUE TO INSUFFICIENT JAIL SPACE

Senator SPECTER. Mayor Barry, I think it is a real fact of life in this country and in this city that judges do not sentence people to jail whom they would like to send to jail because jails are overcrowded. It is a matter of public record that in New York City 613 detainees were released under a Federal court order because there was insufficient space in the detention center.

And it is a matter of public record that in excess of 20,000 people were released from jails on sentences which had not been served because there was insufficient jail space, and a concern that I have, as chairman of this subcommittee, is that we may be getting there in the District of Columbia, and I would like to see it headed off before we get there.

But that is what this hearing is for, which is to ascertain the facts on it.

Mayor BARRY. I understand that. I was just trying to indicate we would like to get some more data to you on this subject. We do have data on the number of arrests that were made last year, the number of cases that were no-papered which, I think, is in the 40-percent range because of lack of evidence and other kinds of things.

I just maintain, Mr. Chairman, and again, it is a matter of judgment and analysis that we would like it, if we had the luxury, of spending $40,000 a jail space to build more, but I think we are stabilizing now on the numbers. The numbers show, in the last 10 months, no growth in our correctional population.

Senator SPECTER. Mayor Barry, I would appreciate it if you would furnish to the subcommittee the statistics over the 10-year period. As you have outlined the facts here today, there has been an enormous increase in incarcerated numbers from the decade that you have cited, more than doubled from 3,217 in 1974, as I have your figures, to 6,821.

So at least over that period of time there has been a significant increase.

Mayor BARRY. Mr. Chairman, let me just say those increases have been in line with our projections. We have been more right than wrong in our projections on the situation. Mr. Chairman, take the parole situation which you certainly have been very concerned about. You have helped us to move some things along.

From January to October 1984, there were only 779 people released on parole. Assuming that a significant number of those paroles were revoked, you are not talking about thousands of people now having to go back to jail.

NUMBER OF PERSONS ON PAROLE

Senator SPECTER. What is the total number of people on parole right now in the District of Columbia, Mr. Mayor?

Mayor BARRY. Active parole, a little over 2,000. Some of them have been on parole, 5, 8, 9, 10 years.

NUMBER OF PERSONS ON PROBATION

Senator SPECTER. A little over 2,000. How many people on probation in the District of Columbia?

Mayor BARRY. I do not know. The courts would have that, Mr. Chairman.

Mr. Chairman, I guess all these things are issues that we could discuss, but I would have no objection to additional jail spaces being built if we could figure out a way to afford all of this tremendous expense.

We found that when we took the jail down to about 1,700 people, which we did at one point, on marginal cases, where prosecutors and judges have judgments to make about whether or not you recommend a $5,000, $10,000, or $20,000 bond, et cetera, on those marginal cases, they may, in some instances, send people to jail if they think there is a space.

But I am convinced, Mr. Chairman, that the prosecutor's office and the judges are incarcerating the most violent, repeat offenders that we have in our community. I have seen the numbers. I am convinced of that.

I do not think you have violent multiple repeat offenders, except maybe by human error, walking around in our community. The numbers do not show it.

PRISON POPULATION OVER LAST 10 YEARS

Senator SPECTER. Mayor Barry, you may be entirely correct about that, and you and I have discussed this both informally and on the record, and I quite agree that there has to be a sensible bail system so that we do not detain in advance of trial people who should not be detained.

And I quite agree with you that there has to be a sensible approach on funding of jails, but if you take a look at the projection on the statistics which have been made available to me, and I think it is worth focusing on them for just a minute with you, the U.S. attorney, and me present so that these facts are before all of us, and it will take about 3 minutes.

In 1974, and these are the total incarcerated in the District of Columbia, 1974, 3,307; 1975, 3,548; 1976, 4,432; 1977, 4,601; 1978—went down—4,535; 1979, 4,649; 1980, 4,713; 1981, 5,114; 1982, 5,890—a big jump—1983, 6,651; and 1984, as you have just outlined, 6,821.

So that if you take the period from 1980 at 4,713 to 1984 at 6,821 that is an enormous increase.

Mayor BARRY. We agree.

MANDATORY SENTENCES

Senator SPECTER. That is the projection I see, and I see more manditory sentences. I see career criminals. I see 2,000 people on parole. Well, I am not going to speculate as to how many of those may be subject to revocation. I really do not know. That remains to be seen.

How many are there on probation? I would like to know that, too, so we can make an evaluation as to how many will be detained.

But my sense is the District of Columbia has a serious potential problem here as does the United States of America, but New York City is in shambles. Washington, DC, is a paragon of virtue compared to New York City.

But I think unless we take a look at it here, unless we look at it nationally, it is going to get worse and worse, and that is why I want to be in a position to analyze the facts, understand the problem, and see what we do about it.

Mayor BARRY. Mr. Chairman, I agree. I hope I did not give the impression that I was not agreeing with getting in front of the curve and trying to see what we can do before it became an unmanageable problem.

I was trying to give, I hope, a direction to indicate that we were not only concerned but demonstrated our concern by putting 1,800 beds into place since then. As I said earlier, we have had these discussions before, and there is a differing point of view among some law enforcement people.

ALTERNATIVES TO INCARCERATION

I think every person who commits a crime ought to be arrested, ought to be convicted if guilty. The question is what do you do with them after that. I think we ought to be looking at some other approaches.

We looked at a sample of people at Lorton and what they were in prison for. Out of 587 people who were being held, 215 were being held for petty larceny. I think it is wrong to steal from anybody, to take a penny from anybody, but maybe we ought to get to the point where the offender pays to society and to country. Maybe we should help the offenders by taking some of these cases and putting them to work, or make them do restitution, or community services.

There was a program in one of our States. I just read about a program in a State where they had done this, and it has been very, very successful. I will try to get it out of my files. We both agree that something has to happen, and I am just advocating that we are not rushing into just building new jail cells until we can see if there are any other alternatives to make the public safe. We must convict those who are guilty of crimes and also solve overcrowding problems.

DISCOURAGING VIGILANTISM

Senator SPECTER. I quite agree with that, Mayor Barry. I do not think it is something we can rush into in any event. Something we have to take a close hard look at the statistics and really, really see where we are heading.

Senator D'Amato and I held hearings in New York City on December 21, 1984, as part of the Juvenile Justice Subcommittee on the issue of jails, and the statistics on the number of people who were sentenced in New York City for major felonies was just astounding, people who had been arrested for seven or more felony offenses only a small handful actually went to jail.

There is a major event which is in process right now on the man who is charged with shooting the men on the New York City subways, and Mayor Koch has made his statement that vigilantism will not be tolerated in New York City.

There is a very curious public reaction as to what really happens on the subways or on the streets of New York City. Vigilantism is a response when you do not have any law and order and justice, and there is a real question about whether there is any law enforcement, law, order, and justice in New York City the way law is being enforced there today, which is bringing a real public reaction which is shocking in the sense, and in other senses, not so shocking because of what is happening there.

I can recall when I was elected district attorney of Philadelphia and in early 1966 went to arraignment court in Manhattan and was astounded at what I saw on plea bargaining there on repeat offenders who were charged with very serious crimes, and armed robbery cases were bargained down to larceny and people were turned out on a revolving door.

So that you have a kind of public response of individual response on vigilantism and a widespread public response that seems to back that up, and I think unless we take a stand against crime in this country that we are going to see more of it.

I certainly would not want to see it happen anywhere else.

COMBATING JUVENILE CRIME

Mayor BARRY. Mr. Chairman, I agree that the general public is becoming more and more outraged at what they think is the ineffectiveness of the justice system. That is why I think that we should continue some of the initiatives begun over the last 2 years since you have been chairman of this subcommittee. I think we have taken some initiatives that have at least locally allayed some of the fears of the citizens here.

I think there is greater confidence now in our ability to control crime. On the other hand, I understand the feelings of someone whose house has been robbed or violence has been imposed upon them. I am just urging us, as I am sure you would want, to look at this swiftly but not at any breakneck speed to just do and react but to try to analyze it.

I think ultimately what we have to do, and I am getting ready to have some discussions with the school system and others about this, Mr. Chairman, I think that we have to try to find a way to get us somewhat off this treadmill.

There is a direct correlation between those who are arrested for juvenile crimes, as you very well know, and those who go into our adult system. We are working locally on some programs to at least figure out what we can do with those 3,500 young people arrested last year who are juveniles and were not charged as adults. How do we try to break that cycle?

Now, that may sound like theory, but if we could ever find a way to at least break apart that cycle, I think these numbers would come down, but as you and I have discussed on several occasions, young people, at younger ages, are committing more and more violent crimes, and I do not have the complete answer.

I will tell you. I think these hearings are a good way to get it out, but I do not think that any of us have the ideal solution, and we will just keep working and thinking and probing together to try to come up with one.

COMMENDING THE MAYOR

Senator SPECTER. Mr. Mayor, I commend you for the leadership which you have shown in the District of Columbia on the crime problem as well as other problems, and you and I have worked through the problems in public hearings and we have worked through the problems privately where we have sat down and worked them out, and I know that you and I will continue to do so.

It is a matter of an analysis of the facts, and if there is some way to break the crime cycle, we really want to try to do that, but until we see our way clear, then we have to cope with the problems as they come to us.

At this point, let us invite U.S. Attorney diGenova. If you would keep your seat, Mr. Mayor, because I think there may be some useful dialog and cross-exchange.

Mr. diGenova, I know that the entire matter of the criminal justice system has been very much on your mind for many years as assistant U.S. attorney and now as U.S. attorney, and I thank you for being here today and look forward to your testimony.

OFFICE OF THE U.S. ATTORNEY

STATEMENT OF JOSEPH diGENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA

ACCOMPANIED BY:
JOHN P. HUME, PRINCIPAL ASSISTANT
TIMOTHY J. REARDON, III, EXECUTIVE ASSISTANT
RAMSEY JOHNSON, DEPUTY DIRECTOR, SUPERIOR COURT

Mr. DIGENOVA. Mr. Chairman, I want to thank you again for the opportunity to be here today to talk once more about the evolving situation in the criminal justice system of the District of Columbia.

I wish to compliment the city as well as you have, Mr. Chairman, on the dedication that the city has demonstrated from the Mayor's office, the Mayor personally, from the chief of police to doing something about these problems.

As long as that kind of cooperation exists between the city and the Department of Justice and this committee, I am sure, and no matter how serious the problems are, that we are going to continue to make headway.

The fundamental problem that we are facing here is what we have addressed in these hearings for the last 2 years, and that is a return to realism. This committee, the city itself through the chief of police's strong on-the-street enforcement tactics have begun to make major headway in dealing with street crime, neighborhood crime through neighborhood programs, and other things, as well as very strong enforcement.

What that new realism has done is return us to face the problems head-on as to what we are looking at. If I could just point to the left here, these really complement the statistics presented by the city which deal with the incarceration rates.

NUMBER OF ADULT CASES

These are the number of adult cases presented to us starting in 1979. In other words, this does not include juvenile arrests and it does not include adult arrests for traffic offenses or anything like that. These are just misdemeanors and felonies presented to the U.S. Attorney's Office by the Metropolitan Police Department and some by the U.S. Park Police.

We were at 19,300 cases presented to us for prosecution with 3,900 drug cases in 1979. We shifted to more than 22,000 cases in 1981 with 6,400 drug cases presented to us. In 1983, 23,700 cases totally presented to us, of which 8,800 were drug cases, and through only early December 24,000. We expect to be above 25,000 when our final statistics are in for December. These are cases presented to us, and we expect to have 9,500 be the closeout figure on drug cases of that 25,000.

Now, what is happening with those numbers—and if we could go to the next chart—is that we are having an actual increase in, just for example if you look at the misdemeanor charges that are being filed only in the drug-possession cases, misdemeanor cases, they have risen astronomically.

The closeout figure for 1984 will be well over 5,600 to 5,700, probably above that, for 1984.

DRUG TRAFFICKING

Now, just looking at drug trafficking which is more likely to lead to incarceration than the misdemeanor drug charges of possession which we just looked at, we started out in 1979 filing 216 indictments for felony drug charges.

Now, this last chart for 1984 is not inclusive because it does not include the last 3 weeks indictment returns, but the reason there is that line up there, the white line, slash line below the number 2,038 indictments is that if we were to extend that line all the way up, it would go off the chart.

The number of felony indictments will exceed 2,038 in calendar year 1984. Now, what that means is that that is consistent with the statistics of the city that more people have been incarcerated.

Now, what is happening, however, is that under the new mandatory minimum sentencing law, many of these 2,038 indictments include individuals who have already once, under the new mandatory minimum statute, invoked the addict exception and have not been sentenced to jail.

Under the law, they can only invoke that exception once. The next time it is a mandatory minimum of 5 years or 20 months to 5 years, depending upon the particular drug involved.

The likelihood of more people having to do time for drug trafficking, therefore, in 1985 and 1986 is skyrocketing which means that just on those offenses alone we are going to have a major problem in terms of actual convictions and actual rates of incarceration, because we are talking about trafficking. We are talking about actual sales, not possession offenses for which there may not be an incarceration. We understand that.

Going to the last chart which is the chart which indicates what we are looking toward, these are the actual convictions by plea or trial in all felony and misdemeanor cases. In 1983, we had 9,964 with 4,084 of those being drug cases.

Through November only, we have 9,719 convictions with 4,278 of those being drug cases. So the trend is a steady one, and I am happy to say that the incline appears to be coming down slightly and that it is still on the increase.

So that if you couple these statistics with what you indicated earlier, in other words, increased probation revocation, increased parole revocation—we are going to have four new superior court judges sitting in criminal trials, two of them will be on accelerated felony trial calendars which means that we are going to get the serious chronic offenders to trial faster which means hopefully with convictions they will be sentenced faster.

PRETRIAL DETENTION

We are using pretrial detention now, technical pretrial detention at historic rates, which means more people are being incarcerated prior to trial. Convictions are up. Mandatory sentences are being imposed. Tougher sentences are being imposed even where there is not a mandatory sentence because judges are beginning to respond to the new realism and to the demands from the public and from the Mayor and others and from myself that real sentences be imposed against serious felons.

And so the landscape when viewed in its entirety is one where I think, without being revolutionary in any sense, I think we can say that the trend in the rise in those who actually should be incarcerated, in other words, serious offenders, is going to continue.

We have already seen the jail and prison population in the District of Columbia is not soft. It is a very hard population in the sense that, with minor exceptions, those doing time are doing so because they have repeat records.

And I might add, if, for example, a study were to be done to show, and I think it was indicated early that there were some people doing time for petty larceny, my guess would be that if you looked behind the petty larceny conviction, you would probably find four or five or six adult convictions for other things, and that that individual probably had their probation or parole revoked, and they were doing backup time as well as the conviction for petty larceny.

But that is the kind of thing we need to look at. We ought to do a look at that prison population, a really good one, and see exactly what is the profile of that offender in the long run.

And what we see now with the average felony sentence being 4 to 14 years, that is pretty tough sentences being given out by judges, but we are not suffering for any lack of tough, hardnosed, prosecutorial or judicial decisionmaking here, and the police department has done a marvelous job on the streets, and the chief has indicated that he is going to put more people out in the neighborhoods doing more drug busts in neighborhoods where they are having problems.

I think he said he is going to put between 30 and 50 additional officers doing these on-street sale busts to get these smalltime peddlers out of these neighborhoods. So I think what I see happening is that I think our overcrowding problem or our undercapacity problem, whichever way you choose to look at it is going to persist, and I agree with the Mayor. I think it is a problem that needs to be looked at carefully and studied.

FEDERAL RESPONSIBILITY TO PROVIDE JAIL SPACE

It is my personal opinion that the trend in crime is such that we are going to have more serious offenders doing more time and that the likely outcome of any kind of reasoned analysis will be a decision which I have already reached myself which is that we need additional jail and prison space, and I think the Federal Government, by the way, has a major responsibility because of its partial control of the criminal justice system to pay for that.

I do not think there is any doubt about that. If Congress decides that the city, for example, should have additional space, I do not think it is up to the city to pay for that jail or prison space. I think that is clearly a Federal responsibility.

When the U.S. attorney is the chief prosecutor and is making decisions about prosecution policy as I did last year, for example, instead of making one sale a misdemeanor like it used to be, I made one sale a felony. Well, of course, that contributes to the number of felony indictments. Now, if the U.S. attorney is going to make that kind of decision which the city cannot control—the city cannot say to the U.S. attorney, "You should not be making that a felony and somehow affect the way the prison population is calculated," then the Federal Government has a responsibility to put up the money as this chairman has not been reluctant to do, I might add, and I am deeply grateful as I know the city is, then it seems to me that the Federal Government has a responsibility if it is going to impose that kind of tough-minded prosecutorial approach to say, "We are going to pay for this. We are going to do what has to be done."

My view from what I see out in the community is, when I see a mandatory minimum sentencing law passed by 72 percent of those who voted, I do not have any doubt in my mind that the citizens of this city are way ahead in their faith in their criminal justice system than maybe the people of New York who have turned to vigilantism, because the people of the District of Columbia have great faith in their police department. They have great faith in their judges.

CONVICTION RATE VERY HIGH

I hope they have faith in the prosecutor's office, because of our conviction rate which is very, very high, one of the highest in the country. We are at a point that if you do not incarcerate people who should be incarcerated, after all the trouble we go through in arresting and prosecuting them, we do invite the kind of reaction, self-help that we saw in New York the other day.

But the people of this city, I think, are much more sophisticated. I think they have greater faith in the system, in the years that I have been here, that has responded, I think, tremendously to crime and to the needs of the city. They have been lucky enough to have people in power who cared in City Council and City Hall and the Mayor's Office and here in Congress.

And I do not think we are anywhere near that point in this city because with the number of policemen we have and we have 203 Federal prosecutors now which is the largest U.S. Attorney's Office in the country. We have one of the best prosecutorial chronic offender units in the country. We are now verticalizing all of our felony one prosecutions, particularly with child sexual offenses, so those children do not have to go through the agony of dealing with four, five and six prosecutors.

I think the long-run trend here is more convictions, more incarcerations, and more longer jail terms. I think in the long run that means we are going to have to have additional jail and prison space, and I think the Federal Government ought to play the major role in footing the bill for that.

ROLE OF FEDERAL GOVERNMENT

Senator SPECTER. Mr. diGenova, a number of questions. When you say that the Federal Government ought to assume the cost of jails given the role of the U.S. attorney in the charging decisions and the influencing of sentences and jail time, were this not a unique Federal jurisdiction, but assume that the District of Columbia had independent status as a State, what role would you think appropriate for Federal funding of jails to be under that circumstance or, for example, for the State of Maryland or the State of Virginia?

Mr. DIGENOVA. Yes. Well, if, in fact, as some have proposed, you were to remove from the U.S. attorney the authority to prosecute local crimes, which is a perfectly acceptable notion under the evolving theory of home rule, if you were to do that, then you would have a different philosophical situation because then you would never have the Attorney General responsible, as the Mayor indicated earlier.

The Attorney General technically is responsible. He is the responsible custodian of every prisoner, except those for Corporation Council offenses. And in that situation, with the Attorney General being the legal custodian with delegated authority to the Mayor and Mr. Palmer, there is a very strong argument that the Federal Government has a major responsibility, and indeed, it has been meeting that responsibility, although earlier, I think it is very important to note that the Federal Bureau of Prisons is now shutting off the faucet on taking D.C. prisoners, and indeed, they have started to send back Youth Corrections Act prisoners, which means that if the District passes its own Youth Corrections Act, the Bureau of Prisons will not be able to accept any of those prisoners under any circumstances. They do not have the legal authority to accept them.

However, if that were changed, then, of course, I think it would be the city's responsibility to foot the bill completely. And by the way, I am talking about construction of facilities, not permanent maintenance, because I think the Federal Government, through the Federal payment, will probably bear some of the cost of maintenance anyway through a continued Federal payment. If the current legal structure of the District remains the way it is, I do not see any way that Congress would not be paying for just about all this anyway.

PRETRIAL DETENTION IN DISTRICT JAIL

Senator SPECTER. Turning back to a point that Mayor Barry raised, Mr. diGenova, what is your thought as to whether there are a significant number of people in the District jail who ought not be there where cases are no-papered as the Mayor had commented earlier or where bail may be excessive?

Mr. DIGENOVA. Well, I must say, Mr. Chairman, we have been around this track several times in the past in an effort to get a look at what is happening in order to assist the court. The court itself does regular reviews to see whether or not individuals who are at the District jail should not be there, if there is some way to review bond conditions.

We have one of the most sophisticated court systems in the United States. Our pretrial decisionmaking with regard to bond and pretrial release and pretrial detention, in my view, is the best, most highly developed system in the country.

I do not think there is a city that is more sensitive to the rights of defendants, to their right to be out pretrial on personal recognizance if they do not pose a danger to this community or if they are not repeat offenders, than any other place in the country.

I would like to see statistics that demonstrate that there are any more than perhaps a handful at best of individuals in the District jail who are on pretrial detention or some other form or waiting sentencing who should not be there.

We have begun to use pretrial detention more in the last 2½ to 3 years because we have had an increasing belief. First of all, we finally got a decision from the D.C. Court of Appeals that said that pretrial detention was constitutional which was a big boost and made us more likely to use it.

But second of all, we, through the creation of the chronic offender unit, have discovered that we, in fact, have had a serious problem with a group of repeat offenders as the chief of police has indicated, about 20 percent of the criminals committing about 80 percent of the crime, and with about 50 to 60 percent of all the crime drug related in some way or another, I would challenge anyone to do an analysis of the present jail, not Lorton because those are convicted individuals, of the District jail population with regard to pretrial detainees and to find any more, from what I can tell, than a handful, if that, of individuals who should not be there.

The judges in this jurisdiction are not cavalier about the use of high bonds and pretrial detention. They are a seasoned, highly dedicated group of individuals who spend a great deal of time laboring on doing the right thing.

I think we have one of the best judiciaries in the country in superior court, and I really do not think that we have that problem with people who should not be in the District jail being there on pretrial detention of one form or another.

PRISON PROFILE

Senator SPECTER. Mr. diGenova, a few moments ago you made a reference to taking a look at the prison profile. What did you mean by that?

Mr. DIGENOVA. What I mean was, Mr. Chairman, regularly and consistently when this issue has come up, there have been critics, and this has not been the city, there have been people who are outside the criminal justice system, students, we might call them, of the criminal justice system, who say that the jail and prison population is soft and that there are really hundreds of people who could be released who do not need to be in jail.

I issue the same challenge to those individuals when I say that is not a challenge to the city because I think the city generally agrees and the Mayor did earlier that the prison population is very hard, that there are a lot of serious offenders doing time.

I would like to see, just as an answer to these people who keep saying our jail and prison population is soft, an analysis done of who is there, what they are there for, and more importantly, what their record is and what they are there for.

I venture to say from what I have seen from the superior court computer system the judges in this town are not sending people to jail who are first offenders or who are minor offenders. They are sending people to jail who have substantial criminal records, usually six or seven juvenile arrests, three or four adult convictions, plus a string of adult arrests that did not result in convictions.

So that I really have seen no evidence whatsoever to support the notion from some so-called scholars that we have a soft prison population. We do not. The city does a very good job of deciding, through its judges, who should go to jail and who should not.

I dare say that at this point, even with the rate of incarceration that the Mayor alluded to earlier, that if you look at what people are going to jail for, they are fairly serious matters.

In addition, there may very well be some people who are in jail for, say, petty larceny or for a drug possession case, but generally speaking, those are individuals who also are on probation or parole for some other offense and also have a long criminal record.

You will not see a first offender for a drug possession going to jail. You will not see a first offender for petty larceny going to jail or for taking property without right, or simple assault, or even an assault with a dangerous weapon such as a baseball bat, or a piece of glass, or lye, or something like that, or a knife.

We have done a fairly good job at the prosecutor's office and in the judge's chambers of discriminating against who is a serious offender and who is not, and we generally base it on what their record is.

So what I would like to see is just to finally answer this question for everyone who is there and what are they there for and what is their record, and I think that would be a good addition, not only that, but I think it would answer some of the questions which the Mayor has appropriately raised about let us make sure we know what we are talking about.

CONVICTION RATES CONTINUE TO RISE

One thing is for sure, the conviction rates are going to keep rising. The number of people who are sentenced to jail are going to go up, and what we must avoid is the situation, the dilemma which you have posed.

You know, there is an old saying that the beginning of wisdom is to call things by their proper name, and what we have to decide is whether or not we are going to call the statistics and all the net results by their proper name.

If we see we have a problem that is emerging with larger numbers of individuals who are going to be sentenced and are going to have to go to jail because of the nature of their offenses, I think it is very wise, as you are proposing and as the Mayor has indicated he is willing to do, to talk about what we can do about that.

I am opposed, unalterably opposed, to the premature release of convicted felons ahead of time once they have been sentenced, because that turns the criminal justice system on its head.

It invites the kind of reaction and vigilantism that we have seen, unfortunately, displayed recently not only in New York but elsewhere. We must never make the citizens feel that when a person is finally convicted for a serious crime, they can get away from it because the prisons are too crowded.

That is no answer to a taxpayer who has worked hard for his money and wants to be safe at the same time. I know everybody at this table shares that view. So I am not reflecting anything but a general opinion. But I, for one, believe that with the kind of hardnosed law enforcement that we have had here for quite awhile with both Republican and Democratic people running the U.S. Attorney's Office, it would be unacceptable to prematurely release convicted felons who are convicted of serious crimes.

That would cause the kind of result that you alluded to earlier where people lose faith in the criminal justice system and then turn to self-help.

TRENDS IN THE PRISON PROFILE

Senator SPECTER. Director Palmer, what would it take to accomplish the kind of a prison profile that Mr. diGenova has just referred to?

Mr. PALMER. We can do it, Senator.

Senator SPECTER. How long would it take to complete that?

Mayor BARRY. It will not take long. Mr. Chairman, you are speaking of trying to look at what would happen. You take a snapshot, say, you take next Monday and you try to take a survey of everyone that is there now.

We have a lot of data. I guess I will ask them whether or not we have the computer capacity to compile it and look at it. Unfortunately, I think it may take, to give you something that you really can use, that we can all use, because we are not interested in just getting raw data, it will probably take about 30 days.

Senator SPECTER. Well, Mr. Mayor, I would suggest that we do that. I would suggest that we——

Mayor BARRY. Mr. Chairman, what I am saying is we took a quick look when we started our educational program. We wanted to just get a profile of age and how long people had been there, how much time they had, but we did not go into any depth. So I think 30 days would be a reasonable time to get it, analyze it, make it meaningful in order to consider what we were looking at, rather than simply view some numbers extracted from the computer.

Senator SPECTER. I think we should do that, because I do agree with you, Mr. Mayor, that we ought to answer certain questions which you have posed, and those questions are: Are there some who are there held for bail which ought not be there, held on minor charges?

Are there some in jail who ought not to be there? My sense is in agreement with Mr. diGenova that you have a pattern evolving where there is a need for more jail space, and I believe that those of us who are in this room today, you, Mayor Barry, and U.S. Attorney diGenova, and this subcommittee will not disagree on conclusions once we have all the facts, once we have a profile as to what kind of people are in jail, once we have an understanding as to what the projections are.

Mayor BARRY. Senator, may I add, though, to make our position very clear? I agree with the trends. Those charts, those numbers speak for themselves. I mean, you have 65 or 70 percent of those who are arrested. We have a very sophisticated urinalysis and drug testing program now. Our Pretrial Service Agency probably is among the best in the country, and has good equipment. So the numbers are speaking for themselves.

I guess we want to look at whether there are any other nuances that can help us examine this problem. Also, I happen to agree with U.S. Attorney diGenova that the Federal Government—he knew I would agree with this—the Federal Government does have a role in having to pay for the construction of any additional facilities outside and beyond our own local taxes and our own local Federal payment process.

But I do not think we are that far apart on what the trends look like. I mean, they are frightening when you look at the number of drug arrests and related arrests, and not just simple possession, but sales. They are frightening, and they are something we ought to do something about.

So I do not think we are that far apart on where we ought to begin this, and I am not advocating that we take forever to do this either. We ought to look at it and move ahead and try to come to some conclusions.

APPROVING FINANCIAL RESPONSIBILITY

Senator SPECTER. I think Mr. diGenova made quite a concession in terms of Federal financial responsibility, and I know that the Office of Management and Budget had approved his statement prior to the time he made it.

Mayor BARRY. I am sure.

Senator SPECTER. And that David Stockman will stand behind everything Mr. diGenova has said.

Mr. DIGENOVA. I was expressing a philosophical position, Mr. Chairman.

Senator SPECTER. I understand you were, Mr. diGenova. And the responsibilities for appropriation come in significant measure with the Congress, and my own sense is that this subcommittee and the Appropriations Committees in the Senate and the House would be willing to measure up to responsibility to fund construction which was necessary and which was reasonably calculated to be successful, and it has to be part of an integrated program, a program where there is sufficient number of judges to try people without having them in jail for long periods of time awaiting trial, where people are out on bail for unreasonably long periods of time.

But I think we really are facing a crisis upon a crisis, a crisis which is worsening. A crisis of a crisis. When Senator D'Amato and I held a hearing on December 21, 1984, and we had a look at statistics, and I have just sent for them from my office, from the city of New York, the Office of the Mayor, Coordinator of Criminal Justice, really astounding statistics. For a 10-year period, there were almost one-half million people who had one felony arrest, 473,849 persons. Of that number, almost 20,000, 19,536, had more than seven felony arrests but no conviction.

Now, that is an astounding figure that where there are one-half million felony arrests in a decade and 20,000 people are arrested seven or more times for felonies without a conviction, you have an understandable attitude on the part of the victims and the public that there is no law, order, or justice.

That is what breeds the spirit of vigilantism, and that is a situation which is intolerable. It is not sufficient as Mayor Koch said that vigilantism will not be tolerated, what is more intolerable is that the criminal justice system has produced a spirit of vigilantism.

What is happening in New York ought not to happen in Washington, and what is happening in New York ought not to happen across this country, and if we do not draw a line here, it may.

I think it is a very useful session, Mr. Mayor and Mr. United States Attorney, and let us proceed with the step on the profile, and when we have had a chance to analyze that, we will reconvene this subcommittee, say, in a 40-day range. If it can be produced within 30 days, within 10 days thereafter we will set another hearing. We will sit down and we will again reconsider where we go from here.

Mayor BARRY. Mr. Chairman, let me also suggest and we will do it internally as we look at our present profile, these persons did not just come from somewhere. I would like to look at what is happening to the age range of 13 to 17 or 18 and see what we can do in this area.

Maybe Mr. diGenova may have some ideas about it.

SERIOUS CRIME PROBLEM IN EARLIER AGE GROUP

Mr. **diGenova.** Mr. Chairman, one of the problems is exactly what the Mayor has alluded to. We have a serious problem not only in the country but here in the District of Columbia and the District is no different than any other city. We are not talking about something that is just a problem here.

We have much more serious crime being committed by people at a much earlier age and they are being convicted at much higher rates. The Department of Justice has just finished a study on this which I have a copy of, and I will be delighted to share it not only with the committee but with the city as well, and that is about the problems that we are facing.

The fact is if we do not reach these juvenile offenders between the ages of 10 and 13 roughly, we have basically committed them or they have committed themselves to a life, generally speaking, of evolution into adult crime.

I like to say, whenever somebody asks me, "What are you going to do about crime, Mr. diGenova?", to say, "Well, I am going to do everything that I can," but the problem is, when it comes at the end of the process which is where I get involved, after someone has been arrested, that is almost too late.

There are a lot of other people out there who have responsibilities in any community, other institutions that are actually much more important than mine or anybody else's in government, schools, churches, families, and all kinds of other support groups who ought to be identifying children with problems much earlier and getting them some kind of treatment so that we do not have to have a hearing like this.

That is utopia. That is a long way off, but I do think we could take some time, maybe not necessarily in conjunction with this particular analysis of the jail population, that we might be able to find out what kind of juvenile records all these individuals have, although the rules of confidentiality of juvenile crime make it almost an impossibility from time to time to find out about the individual history of offenders so that legislators might be informed and be able to do their job.

I think we could probably take a look at the juvenile offender per se and find out what we are learning about the nature of crime as a result of the decreasing age of individuals who are committing murders, rapes, robberies, arsons, and are involved in drug distribution at preteen.

So I mean, we are talking about serious problems. So I agree and I think that is an area where we ought to take more than a peek at.

APPROACH TO JUVENILE CRIME

Senator **Specter.** Mr. Mayor, I would agree with your call for a special analysis there. Let us, at the same time, take a look at what you might propose by way of an approach to juvenile crime.

If you had the resources, how would you tackle the problem of juvenile offenses? That is something that I have worked on a great deal in the last 4 years as chairman of the Juvenile Justice Subcommittee.

It is a very difficult matter. We have an Office of Juvenile Justice and Delinquency Prevention [OJJDP] which has been maintained, a $70 million budget across the Nation. Let us take a look at the District of Columbia as a target area for some special emphasis, again the the model city approach.

There may well be some funds within in the OJJDP budget or it may be that this subcommittee can provide some assistance for you. But I would certainly share your concern and would express a willingness to target the juvenile to try to relieve him from the criminal cycle which puts him into the adult category.

Director Palmer, when you make this profile on these individuals, I would like to have an answer to the question which Mr. diGenova has raised and Mayor Barry has raised inferentially, and that is, what are the juvenile records of these individuals?

If you have problems getting access to them, perhaps in the interest of this specific study, we can get an appropriate court order to have them released in camera for purposes of our own analysis for a very important legislative purpose.

Mayor BARRY. Mr. Chairman, let me, again, since it appears to be winding downhere, thank you for your great interest. The reason I brought up the latter point is that those of us who look at things on a continuum like to, at some point, also focus on the beginning. Assuming we conclude we need another 1,000 beds or 500 beds, whatever numbers we are talking about, my view is, unless we find some way to prevent criminal behavior, we will not get off this treadmill. We will not get off the treadmill unless we think about it, and talk about it.

I think your being on the Juvenile Subcommittee gives you another perspective, especially since you are also chair of this committee, and a former prosecutor. I think we must look at your incoming rate and your exit rate. When your incoming rate is greater than your outgoing rate, that is when you start getting the bulge.

The question is what can we do as a city, preferably as a model, to at least slow down this serious problem. Believe me if I had to name one contributing factor to crime, it would be the tremendous rise in drug-related activities. We are in an epidemic. I have said it. Mr. diGenova has said it. We have all said it, and it is getting worse.

SUBCOMMITTEE RECESS

Senator SPECTER. I think we have our marching orders. Thank you very much.

Mr. DIGENOVA. Thank you, Mr. Chairman.

Mayor BARRY. Thank you, Mr. Chairman.

Senator SPECTER. The hearing is concluded.

[Whereupon, at 3 p.m., Wednesday, January 2, the subcommittee was recessed to reconvene at the call of the Chair.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, JANUARY 8, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:10 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senator Specter.

CONGRESSIONAL WITNESSES

OPENING STATEMENT

Senator SPECTER. Good morning, ladies and gentlemen. The hearing of the District of Columbia Subcommittee of the Appropriations Committee will convene, on the subject of the enforcement of section 22-1115 of the District of Columbia Code, relating to interference with foreign, diplomatic, and consular offices, officers, and property. This hearing is designed to inquire into the procedures and costs to the District of Columbia and the District of Columbia Metropolitan Police Department as those costs are interrelated with costs incurred by the U.S. Secret Service in the enforcement of this statute, with focus on the propriety of the enforcement of the statute in a constitutional context.

It is a statute which has a number of subparts, and some of the subparts appear on the face to pass constitutional muster, and some of the subparts appear to have substantial problems. This section provides in a number of subsections the following limitations:

> It shall be unlawful * * * to interfere with the free and safe pursuit of any diplomatic or consular representative of any foreign government within 500 feet of said building,

a provision which would appear to be appropriate and constitutional on its face.

Other provisions specify that it is:

> * * * unlawful to display any flag, banner, placard, or device designed or adopted to intimidate, coerce, or bring into public odium any foreign government, party, organization, or any officer or officers thereof,

a provision which on its face has very severe constitutional problems since it is a prohibition against a criticism of a foreign government, but it does not prohibit someone from expressing an opinion in favor of the the foreign government, so it is one-sided.

Another provision of this section says that:

> It is unlawful to bring into public disrepute political, social, or economic acts, views, or purposes of any foreign government, party, or organization.

And there again, given the broad interpretation of first amendment freedom of expression, it is highly questionable whether you may have a prohibition against criticizing economic acts, views, or purposes of a foreign government.

These issues are brought into sharp focus by a number of decisions of the Supreme Court of the United States. In *United States* v. *Grace* in 1983, the Supreme Court held that in a public forum, such as a street or a sidewalk,

> * * * the government's ability to permissably restrict express conduct is very limited. The government may enforce reasonable time, place, and manner regulations as long as the restrictions are content-neutral, or narrowly tailored to serve a significant governmental interest and leave open alternative channels of communications.

This statute is not content-neutral. This statute prohibits someone from disagreeing with what the foreign government is doing, but does not prohibit someone from agreeing with what the foreign government is doing.

In *United States* v. *O'Brien*, in 1968, the Supreme Court of the United States ruled that:

> A government regulation is sufficiently justified. It is within the constitutional power of the government if it furthers an important or substantial governmental interest, if the governmental interest is unrelated to the suppression of free expression, and if the incidental restrictions on the alleged first amendment freedom is no greater than is essential to the furtherance of that interest.

And here we have a statute which restricts freedom of expression, and the question immediately arises whether it is as restrictive as it might be.

The question was considered by the courts in *Clark* v. *Community Center for Non-Violence*, with respect to Lafayette Park just last year, and there have been a series of interpretations on the issue of prior restraint. And one of the provisions of this statute says that the limitations of the statute "have an exception, by and in accordance with the permit issued by the Superintendent of Police in the District of Columbia," which raises the issue of prior restraint.

The proceedings which have been underway in front of the South African Embassy have been complex proceedings where people, perhaps, have sought to be arrested to draw additional focus on the controversy there. There is a report that you have to be arrested by appointment these days, that it takes 2 weeks because of the waiting list, and there is a real issue as to whether this is an appropriate enforcement of a statute of the District of Columbia, considering the costs and considering the impingement on very fundamental matters of freedom of speech and expression. And it is something which this subcommittee thinks ought to be inquired into and has not been up to the present time and raises some very, very fundamental and very important issues on a number of levels.

INTRODUCTION OF WITNESSES

Senator SPECTER. We have a very distinguished group of witnesses who have agreed to appear here this morning, and at this time, I would like to call the first panel: the Honorable Walter E. Fauntroy, Delegate to the District of Columbia. Delegate Fauntroy, we welcome you and ask you to come forward at this time. We have done a lot of work with you on D.C. problems.

We would like you to be joined at this time, if we may, by the Honorable Mel Levine, Congressman from the State of California, second-term Representative. Welcome, Congressman Levine. We appreciate your joining us.

We would like at this time also to invite the legal director of the American Civil Liberties Union of the National Capital Area, Mr. Arthur Spitzer, to join the panel at this time.

Thank you very much for joining us, gentlemen. We appreciate your being here.

Let us turn to you, Mr. Fauntroy, considering your very distinguished and extensive background for civil liberties, opposition to apartheid and practices of segregation, and your very material contribution to the District of Columbia. Thank you for joining us, and we look forward to your testimony.

STATEMENT HON. WALTER E. FAUNTROY, DELEGATE, DISTRICT OF COLUMBIA, U.S. HOUSE OF REPRESENTATIVES

RIGHT GUARANTEED BY FIRST AMENDMENT

Mr. FAUNTROY. And I thank you, Senator Specter. I cannot tell you how delighted I am that you, in your capacity as chairman of the subcommittee on the District of Columbia appropriations, have called this hearing on section 22-1115, the 500-foot limitation rule for demonstrations at embassies.

In doing so, as you know, you are dealing with one of the most precious rights of an American citizen, the right, guaranteed by our first amendment, of peaceful assembly to petition the Government for redress of grievances.

Our founding fathers were eminently wise in recognizing that there might come times in our democracy when the traditional political process was not addressing the issues of concern to individual citizens, and so we passed that first amendment, which guaranteed that no State shall deny a citizen the right to peacefully assemble and petition the Government for redress of grievances.

Throughout my own life and career, I have had reason to praise the founding fathers for that right. I was director of the Washington Bureau of the Southern Christian Leadership Conference during the decade of the sixties, and I am today the vice president of the Martin Luther King Center for Nonviolent Social Change. And I am unequivocally committed to seeking change through nonviolence. And there is no more instructive example to the people of this country or to the world of how you can do that in the context of a democracy than that which we have demonstrated in the civil rights movement over the past 20 years, and as is being demonstrated even today by those who are opposed to our Nation's administration's policy of constructive engagement with South Africa.

So, you are addressing a very important issue and one on which I think this Nation has something to say to the world about how to address issues anywhere in the world as relates to the governments of the world, through peaceful, nonviolent means, and yet effective means.

FREE SOUTH AFRICA MOVEMENT

The Free South Africa Movement, which I had a role in initiating, as you know, does bring into focus section 22-1115. It was developed as a result of what we believe to be policy failures in the Reagan administration and the lack of congressional action. The administration has pursued a policy of constructive engagement which seeks a cooperative relationship with South Africa and improved communications among all countries of the region. The objective is, as we understand it, to increase communications with the United States and South Africa's Afrikaner elite, to reduce the isolation of this elite, and to persuade it to move toward political reform. The administration further believes that its policies will influence South Africa to accept the U.N. plan for Namibian independence.

Implementation of South Africa's new constitution has been cited as an example of a policy success. However, that constitution permits limited political participation by South Africa's Indians and persons of mixed race, but it does not allow political participation for the vast majority of the South African population, the 73.5 percent black population of that nation.

RESTRICTIONS ON U.S. INVOLVEMENT WITH SOUTH AFRICA

Mr. Chairman, during the 98th Congress, we tried as best we could to address through the traditional political process our concerns about those policies and their effect not only upon the social and political life there, but increasingly upon the economic life there and in this country. A number of efforts were begun to put restrictions on the U.S. involvement with South Africa. Key bills were introduced by Congressman Rangel, which would prohibit the export or transfer of nuclear materials, equipment, and technology from this country to South Africa. Congressman Dixon sought to require that the U.S. Government oppose the furnishing of assistance by the IMF to the South African Government so long as it has apartheid practices. Congressman Gray introduced what has become known as the Gray amendment, which would direct the President to exercise authorities contained in the International Emergency Economic Powers Act, to prohibit new investments in South Africa.

Congressman Solarz sought to require the U.S. business people as well as individuals to comply with certain fair employment principles, to prohibit any new loans by U.S. financial and lending institutions to the South African Government or to South African corporations or other entities.

Senator Roth sought to condemn South Africa's arbitrary arrest and indefinite detention of peaceful opponents to the government's constitutional arrangements.

And already in this Congress, as you know, in the Senate, Senator Proxmire has introduced S. 147, which is really a combination of the Gray and Solarz bills.

The only victory during the 98th Congress was the supplemental appropriations bill for 1984. Title VIII of that bill directed our Executive Director on the IMF to oppose, except under certain conditions, credit drawings from the Fund by any country that practices apartheid.

Quite frankly, all other legislation in the 98th Congress failed.

So, in the absence of our action, encouraged by our Nation's "constructive engagement" policy, and the lack of congressional action, the South African Government has become more brutal in suppressing nonviolent demonstrations within the country than ever. More than 170 black South Africans have been killed in the past year. Scores of others have been beaten and jailed. Most recently, the entire leadership of the black labor unions and the student groups and the supportive Asian and mixed-race groups were jailed as a result of their role in organizing a highly successful 2-day strike of black workers that brought much of the nation's industrial heartland to a standstill.

In response to these actions, which were a brutal repression of human rights and nonviolence within South Africa, the TransAfrica Director, Randall Robinson, Civil Rights Commissioner Mary F. Berry, and I presented ourselves for arrest at the South African Embassy on November 21, and since that date, over 100 people, including almost 20 of my House colleagues, have been arrested here in Washington, DC, and over 500 nationwide have, through peaceful, nonviolent exercise of their first amendment rights, offered themselves as well for arrest.

ARRESTS AT SOUTH AFRICAN EMBASSY

Senator SPECTER. Were you among the first three to be arrested, Mr. Fauntroy?

Mr. FAUNTROY. I was the first to be asked by our Secret Service——

Senator SPECTER. You were the first. Well, tell us about the process. What did you do, what acts did you commit which led to your arrest?

Mr. FAUNTROY. Well, we requested——

Senator SPECTER. I do not think it is necessary to say that you have a right to remain silent, et cetera, et cetera.

Mr. FAUNTROY. No; charges have been dropped, I suspect because the South African Embassy did not want to have a jury trial, at which I would be asked why I did it, in which case, as you know, I would take an hour to explain my actions. And they did not want to be on the stand to be asked by our attorneys if it was true what I said. So I am not worried about any charges being brought; I understand they have been dropped, unless you can caution me about them being reimposed.

Senator SPECTER. Well, I think there is always an overcloud about fairness, in terms of asking anybody to say anything which could incriminate them. And technically, that would be true at this time, in asking you what you did, which could conceivably be incriminating as a prospective violation of this act within the Statute of Limitations. And I mention it just in passing. I think the likelihood of prosecution is very remote, and I believe as a legal matter, a possibility of conviction is virtually nonexistent. And you undertook this expression in order to focus attention on the issues that you have raised about unfairness in South Africa.

But for purposes of this hearing, as you well understand, it is important to know the specifics as to where you were at the time that you did certain things, said certain things, whatever it was, to see, really, if you were doing anything that was in any way unlawful, or anything that was not protected by your first amendment rights.

Mr. FAUNTROY. First of all, my action on November 21 was not in any way encumbered by section 22-1115 of the District Code, inasmuch as I did not sing as I walked up to the Embassy and thus, violate the 500-foot limitation rule; nor did I carry a sign. I simply went to an appointment which had been previously scheduled. And after about an hour of discussion of our concerns about the quality of life in South Africa for its 22.5 million black citizens, we requested of the Ambassador that he contact his superiors in Pretoria and——

Senator SPECTER. You talked to the Ambassador?

Mr. FAUNTROY. Oh, yes, we talked at length.

Senator Specter, And you were admitted into the Embassy?

Mr. FAUNTROY. Yes, we were.

Senator SPECTER. So what did you do outside the Embassy, if anything?

ACTS LEADING TO ARREST

Mr. FAUNTROY. I was just about to share with you the fact that after we requested that he contact Pretoria and give us answers to several questions—first, whether they were going to release the more than 200 persons who had been arrested for having engaged in nonviolent demonstrations over the course of the year; second, whether they were disposed toward releasing the legitimate leaders of the black South Africans who had been detained for over two decades, persons like Nelson Mandela and Walter Sisulu, both of whom had been arrested 20 years ago for leading nonviolent demonstrations against apartheid; and third, that they be willing to enter good faith negotiations toward a new constitution—and that we would wait in the office until we got an answer.

He was of the view that he could not get an answer to our satisfaction over the phone, and that we would have to wait indefinitely. We agreed to wait indefinitely. And he said that he would then call the

Secret Service, of course, and the police, and have us arrested for "failure to quit," which is the legal term, and the three of us submitted to arrest for that purpose.

I must say, for the Secret Service, for the Park Police who arrested us, they were very respectful, as they have been throughout the course of the movement thus far.

Senator SPECTER. And the three people were you, Mayor Barry, and who else?

Mr. FAUNTROY. The three people were myself, Mary Berry——

Senator SPECTER. Mary Berry. Pardon me.

Mr. FAUNTROY [continuing]. Who is the U.S. Civil Rights Commissioner, and Randall Robinson, who is executive director of TransAfrica, black America's lobby on Africa and the Caribbean.

Senator SPECTER. Were you inside the Embassy at the time you were arrested?

Mr. FAUNTROY. We were.

Senator SPECTER. And you were arrested for "refusal to quit," refusal to leave the Embassy, after a request to do so.

Mr. FAUNTROY. That is right.

Senator SPECTER. And where were you taken?

Mr. FAUNTROY. We were taken to the Second District Office——

Senator SPECTER. Were you fingerprinted and photographed?

Mr. FAUNTROY. Oh, yes. As a matter of fact, the charges have not been dropped—I have been robbed of my picture. I want to see my picture with a number beside it.

But we were, of course, turned over to the District of Columbia Police and went through the entire arrest process, and remained overnight.

HELD IN CUSTODY OVERNIGHT

Senator SPECTER. You were in custody overnight?

Mr. FAUNTROY. In custody overnight.

Senator SPECTER. And where were you in custody overnight?

Mr. FAUNTROY. At the central lockup, at the Municipal Center, Indiana Avenue.

Senator SPECTER. And you were detained in a cell?

Mr. FAUNTROY. In a cell.

Senator SPECTER. And how big was the cell?

Mr. FAUNTROY. It was a two-person cell. Would you care for me to describe it?

Senator SPECTER. I do want you to do that.

Mr. FAUNTROY. It was with two bunks, no mattress, no pillow, steel-plated, with a commode. And there were at that time some unauthorized creatures there, who have since been removed, I understand.

But we were respectfully treated by our police officers——

Senator SPECTER. When you say "creatures," do you mean rats, mice, vermin?

Mr. FAUNTROY. No; just roaches.

Senator SPECTER. Roaches.

What time of the day or night were you arrested, Mr. Fauntroy?

Mr. FAUNTROY. We were arrested at approximately 6 o'clock.

Senator SPECTER. 6 p.m.?

Mr. FAUNTROY. 6 o'clock in the evening.

Senator SPECTER. And how long did it take you to be photographed, fingerprinted, and processed?

Mr. FAUNTROY. About 4 hours.

Senator SPECTER. About 4 hours. And you sat in the police station during that time?

Mr. FAUNTROY. Yes; through a very careful and lengthy procedure, which——

Senator SPECTER. Why did it take so long? The actual fingerprinting and photographing takes a few moments.

Mr. FAUNTROY. Yes; that was not long, but——

Senator SPECTER. You had to wait?

Mr. FAUNTROY. Really, quite frankly, I am going to have our District committee look into what that process is, because——

Senator SPECTER. That is what this committee is now doing.

Mr. FAUNTROY. No; I mean—oh, I see what you mean, sir. But the procedures were rather lengthy—forms to be filled out, questionnaires, and——

Senator SPECTER. Were you arraigned, Mr. Fauntroy? Did they take you before a judge?

Mr. FAUNTROY. They did, the next morning.

Senator SPECTER. The next morning. So you were there from about 6 to 10. Then you went to the jail; you were in a two-person cell. Was there another person in the cell with you?

Mr. FAUNTROY. Yes.

Senator SPECTER. And who was that person?

Mr. FAUNTROY. Randall Robinson.

Senator SPECTER. And what did you sleep in—the clothes that you wore there?

Mr. FAUNTROY. Yes; and fortunately, I had an overcoat, so I had a pillow, and I was very tired, so I did not notice how hard the bench was.

Senator SPECTER. Was it cold, warm, comfortable?

Mr. FAUNTROY. It was comfortable; it was fairly comfortable.

Senator SPECTER. And you were fed in the jail?

Mr. FAUNTROY. I was fed at 5:45 a.m.—two bologna sandwiches.

Senator SPECTER. Anything to drink—coffee?

Mr. FAUNTROY. Coffee, if I chose to have that, but I do not drink coffee, so I got water.

We were awakened at 5:45, given our food, and then remained until about 9 o'clock, when we were taken to the superior court, where after about 2 hours, because there were a number of other persons being arraigned that morning, we were brought before the judge, at which time we were informed that charges were not going to be pressed by the South African Embassy. And we went through procedures for being released on our own recognizance, at which time we——

CHARGES DROPPED AFTER ARRAIGNMENT

Senator SPECTER. Well, it is not entirely a matter for the South African Embassy in terms of dropping charges. I take it the D.C. authorities agreed to drop charges as well, because the State or the District may pursue a prosecution whether or not the private complainant wishes to do so. It frequently does not, or ordinarily does not, in a trespass case. But apparently, the District wanted to drop the charges, as well.

Mr. FAUNTROY. That is true, in particular inasmuch as we had not violated—well, we were on South African property, of course, and in order to secure arrests subsequent to our actions, we had to be clearly in violation of the 500-foot rule.

NEED FOR A 24-HOUR POLICE COURT

Senator SPECTER. There is no procedure for a judicial officer to sit around-the-clock to process people for arraignments?

Mr. FAUNTROY. There may be a procedure, and perhaps the District government can inform you of that, but——

Mr. SPITZER. There is not.

Senator SPECTER. Mr. Spitzer says there is not?

Mr. SPITZER. That is correct.

Senator SPECTER. Well, that is something that is worth an inquiry, because in other cities—we have a 24-hour police court in the city of Philadelphia, which was put into effect while I was district attorney, and it was designed to see to it that people get prompt arraignments. There is no reason why a citizen should not go from processing, fingerprinting, photographing, to an arraignment where bail is set or bail is not set, and the person should be released at that time, unless there is some reason to detain him further. But I think that is something which your subcommittee, as well as this subcommittee, should pursue in terms of avoiding the inconvenience to the citizens and avoiding the expense to the city.

Mr. FAUNTROY. I think you are absolutely correct on that. As we have increased the number of people who want to make this moral witness and to exercise their first amendment rights in that regard, we have found later and later processing times. A group of about 30 members of the student body and faculty at the University of the District of Columbia were arrested late last week, and many were not released until nearly 3 o'clock in the morning. It took that long to process that many through the procedures that are followed. And I suspect that that is worth a look, as well.

COMPLIANCE WITH 500-FOOT REQUIREMENT

Senator SPECTER. Mr. Fauntroy, is it possible, given the physical layout of the South African Embassy, to have people walk in and out, ingress and egress without interfering with the activities at the Embassy and be closer than 500 feet?

Mr. FAUNTROY. There is no question in my mind that that is possible and it is indeed desirable. In fact, in my testimony, I point out that the problem is that, as it concerns the first amendment rights of free speech, the Embassy is really out-of-sight of the demonstrators. And if we were petitioning the government of South Africa in a public policy interest of concern to us in this country, it is not likely at 500 feet that they would know it, unless they checked it the next day.

Senator SPECTER. So if there is compliance with the 500-foot requirement, there is no communication by those who are expressing their first amendment rights to the people who they are trying to communicate with?

Mr. FAUNTROY. That is precisely the case. And I think in that sense, section 22-1115 hinders the exercise of our right of free expression and free speech that the first amendment guarantees.

DISPLAYING OF SIGNS

Senator SPECTER. How about the point that if Delegate Fauntroy is opposing apartheid—has a sign that says "I am opposed to apartheid"—you would be violating this provision, but if someone holds up a sign that says "I favor apartheid and segregation," that the person would not be violating this provision, because the provision only prohibits criticizing the South African Government? What is your view of the fairness, Mr. Fauntroy, of that one-way street?

Mr. FAUNTROY. Well, obviously, that is an unfair rule, and it certainly should be corrected, and I hope that in your wisdom, the committee will do that. There are some actions that I applaud on the part of governments around the world, and I may wish to say thank you with a sign. And I think it would be unfair for me to be able to do that, and a person who may have a contrary view to be denied that same privilege, by law.

Senator SPECTER. Mr. Fauntroy, we are going to get into this with the other witnesses, but do you happen to have any idea as to what the cost is to the District of Columbia to maintain the kind of police personnel on the scene?

Mr. FAUNTROY. As a matter of fact, I do not, Senator, and for that reason, I am going to remain in your hearing to receive the same testimony that you are receiving from our District officials.

Senator SPECTER. Well, you and Congressman Levine are certainly welcome to join me on the panel and participate in the hearings to whatever extent you would like.

But there is a very real concern on this subcommittee's part as to what are the costs involved, given the limitations of police manpower and the tremendous drug problems we have in this city, and the tremendous crime problems we have, as to what expenditures are being made along this line. And that is something we are going to pursue.

Mr. FAUNTROY. Certainly.

Senator SPECTER. Do you have anything to add at this point, Mr. Fauntroy?

PREPARED STATEMENT

Mr. FAUNTROY. No; you have my entire statement here.

Senator SPECTER. It will all be made a part of the record.

[The statement follows:]

STATEMENT OF DELEGATE WALTER E. FAUNTROY

SENATOR SPECTER AND MEMBERS OF THE SUBCOMMITTEE ON THE DISTRICT OF COLUMBIA APPROPRIATIONS, I AM PLEASED TO HAVE THIS OPPORTUNITY TO ADDRESS THE FREE SOUTH AFRICA MOVEMENT DEMONSTRATIONS AT THE SOUTH AFRICAN EMBASSY.

THE FREE SOUTH AFRICA MOVEMENT DEMONSTRATIONS ARE THE RESULT OF POLICY FAILURES IN THE REAGAN ADMINISTRATION (THROUGH ITS "CONSTRUCTIVE ENGAGEMENT" POLICY) AND THE LACK OF SIGNIFICANT CONGRESSIONAL ACTION.

THE REAGAN ADMINISTRATION HAS PURSUED ITS POLICY OF "CONSTRUCTIVE ENGAGEMENT" WHICH SEEKS A COOPERATIVE RELATIONSHIP WITH SOUTH AFRICA AND IMPROVED COMMUNICATIONS AMONG ALL COUNTRIES OF THE REGION. THE OBJECTIVE IS TO INCREASE COMMUNICATIONS BETWEEN THE UNITED STATES AND SOUTH AFRICA'S AFRIKANER ELITE, TO REDUCE THE ISOLATION OF THIS ELITE, AND TO PERSUADE IT TO MOVE TOWARD POLITICAL REFORM. THE ADMINISTRATION FURTHER BELIEVES THAT ITS POLICIES WILL INFLUENCE SOUTH AFRICA TO ACCEPT THE UNITED NATIONS PLAN FOR NAMIBIAN INDEPENDENCE. IMPLEMENTATION OF SOUTH AFRICA'S NEW CONSTITUTION HAS BEEN CITED AS AN EXAMPLE OF POLICY SUCCESS. HOWEVER, THAT CONSTITUTION PERMITS LIMITED POLITICAL PARTICIPATION BY SOUTH AFRICA'S INDIANS AND PERSONS OF MIXED RACE; BUT, IT DOES NOT ALLOW POLITICAL PARTICIPATION FOR THE MAJORITY BLACK AFRICAN POPULATION.

MR. CHAIRMAN, DURING THE 98TH CONGRESS, A NUMBER OF EFFORTS WERE BEGUN TO PUT RESTRICTIONS ON UNITED STATES INVOLVEMENT WITH SOUTH AFRICA. KEY BILLS IN THE HOUSE WERE:

1. H. R. 1020 (REP. RANGEL) SOUGHT TO PROHIBIT THE EXPORT OR OTHER TRANSFER TO SOUTH AFRICA OF NUCLEAR MATERIALS, EQUIPMENT, AND TECHNOLOGY.

2. H. R. 1083 (REP. DIXON, ET AL) SOUGHT TO REQUIRE THAT THE UNITED STATES GOVERNMENT OPPOSE THE FURNISHING OF ASSISTANCE BY THE INTERNATIONAL MONETARY FUND TO ANY COUNTRY WHICH PRACTICES APARTHEID.

3. H. R. 1392 (GRAY, ET AL) WOULD HAVE DIRECTED THE PRESIDENT TO EXERCISE AUTHORITIES CONTAINED IN THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT TO ISSUE REGULATIONS PROHIBITING INVESTMENT IN SOUTH AFRICA.

4. H. R. 1693 (REP. SOLARZ, ET AL) SOUGHT TO REQUIRE UNITED STATES PERSONS WHO CONDUCT BUSINESS OR CONTROL ENTERPRISES IN SOUTH AFRICA TO COMPLY WITH CERTAIN FAIR EMPLOYMENT PRINCIPLES, PROHIBIT ANY NEW LOANS

by United States financial or lending institutions to the South African government or to South African corporations or other entities owned or controlled by the South African Government, except for loans made for educational, housing, and health facilities which are available on a totally nondiscrimatory basis in areas open to all population groups, and prohibit the importation of South African Krugerrands or other South African gold coins.

5. S. Con. Res. 139 (Senator Roth, et al) sought to condemn the South African government's arbitrary arrests and indefinite detention of peaceful opponents to the government's constitutional arrangements.

The only victory during the 98th Congress was the Supplemental Appropriations for FY 1984 bill (P.L. 98-181). Title VIII, Section 804 of the law directs the United States Executive Director of the International Monetary Fund to oppose, except under certain conditions, credit drawings on the Fund by any country which practices apartheid. All other legislative efforts were unsuccessful.

Encouraged by our Nation's "constructive engagement" policy and the lack of Congressional action, the South African government has become more brutal than ever in suppressing non-violent demonstrations and arresting their organizers. More than 170 Black South Africans have been killed in the past year in demonstrations protesting inferior schools, high taxes and low wages. Scores of others have been beaten and jailed. Most recently, the entire leadership of the Black Labor Unions, student groups and supportive Asian and mixed race groups have been jailed for their role in organizing a highly successful two-day strike by Black workers that brought much of the country's industrial heartland to a standstill.

In response to this deteriorating sitution, TransAfrica director, Randall Robinson, Civil Rights Commissioner Mary F. Berry, and I presented ourselves for arrest at the South African Embassy on November 21, 1984. Since that date, over 100 people, including almost twenty of my House colleagues, have been arrested here in Washington, D.C. Many more have been arrested at South African consulates around the Nation.

The Free South Africa Movement was announced on November 23, 1984. It has four objectives:

1. To secure the release of the 13 leaders charged under Section 29 of South Africa's Internal Security Act of 1982, an Act which requires neither charge nor trial and has already resulted in the death of no less than 64 political prisoners;

2. To secure the release of the credible leaders of the South African people (Nelson Mandela, Walter Sisulu and others) who have been languishing in South African prisons for decades;

3. To compel the start of good faith negotiations between these released leaders and the South African government, both on the grievances which prompted the most recent outbreaks of violence, as well as the ongoing denial of power-sharing to the Black majority in South Africa; and,

4. To compel the abandonment of this Nation's accommodationist policy of "constructive engagement' toward the Republic of South Africa.

The demonstrations have taken place Monday through Friday from 3:30 P.M. to 6:00 P.M. at the South African Embassy which is located at 3051 Massachusetts Avenue, N.W. The 500-foot rule actually places demonstrators at the corner of 30th Street and Massachusetts Avenue. The demonstrators have been orderly and nonviolent.

The problem that I see, as it concerns First Amendment rights of free speech, is that the embassy building is literally out of sight of the demonstrators. The 500-foot limitation prevents those who wish to exercise their Constitutional right of free speech from actually being heard.

I am aware that there have been numerous demonstrations at other embassies which erupted into violence. Thus, there was, and there is, a concern for the safety and security of foreign diplomats. There is obviously no way for the Uniform Secret Service nor the Metropolitan Police Department to be able to determine in advance which demonstrators will be violent and which will not.

Furthermore, I would like to take this opportunity to respond again, to a charge made by the South African Ambassador, Bernardus G. Fourie, who asserted that our demonstrations are similar to those which occurred in Iran following the fall of the Shah. The Free South Africa Movement is nonviolent, unlike

THE DEMONSTRATIONS IN IRAN. WE HAVE NOT SOUGHT TO TAKE OVER THE EMBASSY.

THE LAW ENFORCEMENT AGENCIES RESPONSIBLE FOR ACTIVITIES AT THE EMBASSY HAVE BEEN THE UNIFORM SECRET SERVICE AND THE METROPOLITAN POLICE DEPARTMENT. WITH ONE OR TWO MINOR EXCEPTIONS, THERE HAVE BEEN NO PROBLEMS REGARDING THE POLICE. THEY HAVE ONLY BEEN ENFORCING THE LAW, AS THEY SHOULD.

BUT THE REAL ISSUE REMAINS HOW PEACEFUL DEMONSTRATORS CAN EXERCISE FIRST AMENDMENT RIGHTS IN A MANNER WHICH ASSURES THAT THEY ARE EFFECTIVELY HEARD. THERE HAS BEEN SOME INDICATION OF SUCCESS BY THE FREE SOUTH AFRICA MOVEMENT BECAUSE OF ACTIONS BY THE SOUTH AFRICAN GOVERNMENT. WE KNOW THAT SOME POLITICAL PRISONERS HAVE BEEN FREED AND THAT THE GOVERNMENT HAS UNSUCCESSFULLY ATTEMPTED TO MAKE MINOR DEALS WITH THE BLACK SOUTH AFRICAN LEADERSHIP. IN ADDITION, THE REAGAN ADMINISTRATION HAS SPOKEN MORE FORCEFULLY IN OPPOSITION TO APARTHEID. THUS, THE WEIGHT OF THE DEMONSTRATIONS HAS BEEN FELT.

MR. CHAIRMAN, WHETHER THE 500 FOOT LIMITATION IS CHANGED OR NOT, THE FREE SOUTH AFRICA MOVEMENT WILL NOT REST UNTIL THE FOUR DEMANDS FOR FREEDOM IN SOUTH AFRICA ARE MET.

THANK YOU.

500-FOOT LIMITATION ENCUMBERS ABILITY TO COMMUNICATE

Mr. FAUNTROY. I do want to make the point that, again, the 500-foot limitation does encumber our ability to communicate. And I think that it is important that we in America give the world an instructive example of how to register concern about public policy, whether it is within your own government or that of another government. And the instructive example that we are giving today through the Free South Africa Movement is one which ought to be a model for the world, and would be more effective in communicating that point if this 500-foot limitation were reduced to a more effective distance for communication purposes.

Senator SPECTER. Do you think the United States ought to give an example to the world and a practice of arresting people who are peacefully demonstrating, far from the site of the entrance to an embassy, without stopping people from going in or out, ingress or egress, that those people ought not to be subject to arrest, so that the world sees what we do with people who exercise their rights of freedom of expression?

Mr. FAUNTROY. Yes; I think more important, however, is that when a citizen so deeply feels that a policy is contrary to the interests of the Nation and the quality of life here, that he is willing to violate a law as a demonstration of that, that first that citizen ought to be willing to accept the consequences of this violation—which we are—but that also, the authorities should handle that violation with the dignity and respect that we have seen evidenced thus far in the Free South Africa Movement by our authorities.

I think the important thing is that you can disagree without being disagreeable; that you can exercise the dictates of your conscience even if it goes to violating a law, so long as you accept the consequences, and your right to do that is respected.

Senator SPECTER. Thank you very much, Mr. Fauntroy.

Congressman Levine, we welcome you here and we look forward to your testimony.

STATEMENT OF HON. MEL LEVINE, U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. LEVINE. Senator, thank you very much.

I join with Delegate Fauntroy in thanking you for conducting these hearings on a critically important subject. Unfortunately, I will not be able to accept your thoughtful offer of remaining and participating in the panel. I was very pleased to have the opportunity to testify today, and I had to juggle my calendar around this morning when I learned about it yesterday afternoon. So I will have to leave shortly after my testimony.

Senator SPECTER. Well, we appreciate you being here to the extent that you can.

Mr. LEVINE. Thank you.

I first would like to associate myself with the comments of Delegate Fauntroy. I think that the points that he has made, both with regard to the implications of the 500-foot rule, as well as the points that he has made with regard to the substance of the policy of apartheid, and what we in the House have been attempting to do through a variety of legislative efforts, are critically important points, and I am pleased that he made them, and I support them.

IMPORTANCE OF FIRST AMENDMENT FREEDOMS

On the issue of the rule itself, I do believe that it is critically important for all of us to underscore that there are no greater set of freedoms contained for Americans than those freedoms that are contained in the first amendment. The right of free speech as guaranteed by the first amendment and as guaranteed to the States through the 14th amendment, is certainly at the pinnacle of those freedoms which helps to ensure that we remain a representative democracy.

One thing that I have found interesting in the time that I have served as a member of both the legislative body of the State of California, the California Assembly, as well as the U.S. Congress, has been the interesting irony that on the one hand, there is broad rhetorical support by almost everybody in almost all theoretical instances, about the importance of the guarantee of free speech contained in the first amendment, on the one hand, and on the other hand, this is one of those freedoms which a variety of advocates of one policy or another or dissidents of one policy or another, on a variety of issues, have found numerous ways of justifying limitations, whether it is a limitation in terms of distance, whether it is a limitation in terms of symbols, whether it is a limitation in terms of exceptions to what is viewed as an appropriate expression, whether it is a limitation in terms of those organizations that can or cannot pursue in an unfettered fashion the first amendment freedom of speech. And in this instance, we were dealing, obviously, with an effort by those who drafted the D.C. statute to strike a balance. I assume that the arguments in support of the 500-foot restriction are that if you have a restriction of this type, you can maintain decorum, you cannot embarrass governments that are operating embassies within the jurisdiction of the District of Columbia, you can maintain some type of reasonable order, which I take it are the essential reasons for establishing some form of distance.

But on the other hand, a limitation of this type obviously has a significant impact on the effectiveness of one's ability to exercise a first amendment freedom. To influence a result through the use of the first amendment, to influence a result through first amendment advocacy, one needs not only to exercise his or her first amendment rights of speech, but I would think a corollary of that would be that the speaker has to be heard. The speaker has to have his or her speech fall upon the ears of those persons that the speaker is trying to influence.

My experience, Senator, at the time that Delegate Fauntroy and I and a number of others peacefully picketed and demonstrated in front of the South African Embassy several weeks ago——

Senator SPECTER. Have you been arrested, Mr. Levine?

Mr. LEVINE. No; I have not been arrested, Senator. I elected to join a demonstration that stayed within the 500-foot limit, and thereby did not trigger an arrest of myself or of others.

But the experience that I had in staying beyond the 500-foot limit is, I think, instructive in terms of the hearing that you are holding.

500-FOOT LIMIT IMPAIRS ABILITY TO BE HEARD

Senator SPECTER. Did you feel you were being deprived of your freedom of expression, to communicate?

Mr. LEVINE. I certainly felt that my ability to speak freely had been significantly impaired. I heard people in the protest in which I participated, for example, asking others, "Which building here is the South African Embassy?"

We were on the corner—we were, in fact, about 100 or 150 feet away from the corner, across the street from the South African Embassy. We were picketing and demonstrating and speaking and singing at a building which was several buildings away from the South African Embassy. And I have little doubt that no member of the South African diplomatic corps that wished to avoid seeing us could very easily have avoided seeing us and hearing us.

And if one is to, at a minimum, make a statement that is expected to be heard, doing it from 500 feet away is extremely difficult. So I felt that in this experience, while we were able to make a statement, a statement that all of us felt was extremely important, our ability to make an impact upon the people that we wanted to influence, in terms of making that statement, was very severely restricted; and that in fact, if one of the purposes behind the statute is to maintain order or maintain decorum, I would think that people might get very, very frustrated, particularly if tensions were running high, if the rhetoric became more intense, recognizing that they were being forced by a law to stay so far away from the intended object of the discussion that, rather than maintaining decorum, people's feelings might be sufficiently frustrated so that the opposite result might occur.

And, even though in the short term, I think that you do have the intended result achieved, keeping your distance, not overflowing in terms of boiling over in terms of a situation, but in the long term, the frustrations that are likely to occur as a result of that type of an artificial distance being created are very significant. And, most important, there is little doubt in my mind that effective advocacy simply does not occur when you are advocating something at an artificial distance of 500 feet.

The only way you have meaningful advocacy in this situation is if you are covered by the press, if there is either a news report about it on television or in the newspapers, and if the people within the South African Embassy in this instance, or whatever other intended target you may have, read about it or hear about it. But the result is indirect, the result is insulated. There is not a direct ability to communicate the views and the issues that you are there to express.

PROVIDING SPECIAL SECURITY OR SPECIAL INSULATION

Senator SPECTER. Congressman Levine, do you believe that there is any unique purpose to be obtained in providing special security or special insulation for a foreign embassy, that there is some unique public policy or legitimate interest which ought to be recognized here?

Mr. LEVINE. Senator, I believe that there is clearly a legitimate interest and a special need to provide protection and to provide security for diplomats who are enjoying our hospitality here in the United States and here in Washington. And to the extent that security, to the extent that safety needs to be ensured, I believe that we need to do whatever is necessary to accomplish those objectives.

But in terms of insulating foreign diplomats from the free expression of citizens in this country, I do not believe that that is a useful purpose if it is not required as a corollary to security or safety.

Senator SPECTER. So you think it should be a different standard for demonstration in front of the White House than in front of a foreign embassy?

Mr. LEVINE. I would think not, not in terms of peaceful demonstration.

Senator SPECTER. How about in front of the House of Representatives and a foreign embassy?

Mr. LEVINE. I would think peaceful demonstrations, as long as the standards have been established to ensure that the demonstrations remain peaceful, should be——

Senator SPECTER. You do not think a foreign embassy is entitled to any more protection than President Reagan or Congressman Levine?

Mr. Levine No, I do not; no, I do not. I do believe that a foreign embassy, an ambassador, a staff, is entitled to the same protection, the same security, the same assurance that their activities and safety will not be hindered. But in terms of hearing what American citizens have to say about policies that they are advocating and defending in this country, I certainly don't believe that they should have special protection from those first amendment guarantees.

Senator SPECTER. Tnank you very much, Congressman Levine. I appreciate it very much.

Mr. LEVINE. Thank you, Senator. And thank you again for holding this hearing.

NONDEPARTMENTAL WITNESS

STATEMENT OF ARTHUR B. SPITZER, LEGAL DIRECTOR, AMERICAN CIVIL LIBERTIES UNION OF THE NATIONAL CAPITAL AREA

PROBLEM OF DELAY BETWEEN ARREST AND ARRAIGNMENT

Senator SPECTER. Mr. Spitzer, we welcome you here to testify, and we look forward to your testimony on behalf of the American Civil Liberties Union of the National Capital Area.

Mr. SPITZER. Thank you, Mr. Chairman. I will not make any effort to go through my written testimony that I have submitted.

Before I address section 22-1115, though, let me say a word about some other subjects that the Chair has expressed interest in during Delegate Fauntroy's testimony.

The problem of delay between arrest and arraignment or presentment is a serious one in the District of Columbia, and one with which we have been concerned for many years, under an order entered in an ACLU lawsuit in the District Court, called Lively against Turner. The defendant is Chief Turner, who will be testifying later. There is currently a rule requiring the District to bring people to court within 4 hours of their arrest, if the courts are open. What that means is, generally, that if you are arrested in the District before about 1 p.m., you get to court that day and can be released on bail. But if you are arrested after lunchtime, generally, you spend the night, if you cannot post collateral at the station house. And there is no Sunday arraignment, so if you are arrested on Saturday, lunchtime, you generally stay until Monday morning.

We would very much like to see the establishment of a 7-day-a-week and evening arraignment court.

I regret to say that the District government has been urging Judge Bryant to revoke the order that has been entered in the case and allow them to have a longer period of time to bring people to the court, and we hope that that will not happen.

One other small point. That is that the Chair was speaking about whether the District had decided to prosecute or not prosecute in these cases. My understanding is that it is the U.S. Attorney's Office that enforces the criminal provisions of the District of Columbia Code, except juvenile offenses, and the decision was made by the U.S. Attorney's Office to drop the charges, not by the District government.

CONSTITUTIONALITY OF SECTION 22-1115

Turning to section 22–1115, the comments that the Chair made at the beginning of the session, I think were right on target. We think there is not only substantial question about the constitutionality of that statute; we think it is plainly unconstitutional, those parts of it that the Chair has focused attention on. What it does, I think, can be illustrated by giving a few examples. Not only is the current demonstration against the South African policy of apartheid completely out of sight and hearing range of the South African Embassy; the closest building is a large, vacant mansion with a "For Sale" sign in front of it, and anyone who took a picture or drove by and saw that protest would think that they might be protesting the real estate agent, or something like that, because that is the only sign that you can see in the background. I commute to work down Massachusetts Avenue, and a week or two ago, I saw a group of picketers protesting in front—or, more or less in front; a little off to the side—of the Brazilian Embassy. And if I had not had to stop at a red light so that I could read their signs and learn that they were protesting the British presence in Northern Ireland, I would have thought that they were protesting something in Brazil, but infact, the British Embassy is 500 feet up the street, and that is what they were trying to protest, where the British Ambassador and staff presumably had no idea they were there, because this demonstration did not make the evening news.

For years now—I do not know if it is still there—the AFL–CIO had a large, red "Solidarity" banner hanging off its building on 16th Street, across the street from the Russian Embassy. I am pretty sure that is within 500 feet, and I am not sure why the law has not been enforced against them. But if it is within 500 feet, that is in violation of the law, too, just because it would presumably give the Russians offense to have their policy in Poland criticized that way. And I think enforcement of such a law would certainly be an infringement of American citizens' first amendment rights.

The content-neutrality is the most obvious and most blatant way in which we think the statute is unconstitutional. But even if it were facially neutral with respect to the content of speech, we would still find it objectionable, because it is simply unnecessary. The legitimate purposes of the statute, as the previous witnesses have said, have to do with protecting diplomatic personnel and diplomatic property against any kind of harm. Those are purposes that are essential to be served and our experiences in Iran and other countries certainly should make us very sensitive to those needs.

But keeping peaceful demonstrators almost two football fields down the street is really not necessary to serve that purpose. The Metropolitan Police Department here and the Uniformed Secret Service are very experienced with handling demonstrations in the District of Columbia in front of public and private buildings of all kinds. Those demonstrations are generally handled in a highly professional manner, and I would like the record to reflect my compliments to the Metropolitan Police Department for the manner in which they generally handle the thousands of demonstrations that go on in the District every year.

There is certainly no reason to believe that demonstrations in front of foreign embassies, as long as ingress and egress was open, and as long as no harassment or abuse took place, could not be handled with equal professionalism and without damage to any legitimate interest.

There is still a third manner in which the statute, we think, is unconstitutional, and that is its vagueness. The words, "any device, any flag, banner, placard or device," certainly seem to cover the world. One would imagine that wearing a T-shirt that said "Solidarity" or "Down with Thatcher" or "Americans against Apartheid" is a device calculated to call those policies into disrepute, and that a person walking down the street, wearing such a T-shirt in the summer, would be subject to arrest under the law. Presumably, it is not enforced in that way, but that only goes to show the difficulties of enforcement and the impossibility for a person really to know whether his conduct may be covered by the law.

ACT FOR THE PROTECTION OF FOREIGN OFFICIALS AND OFFICIAL GUESTS

Now, these valid purposes that I have mentioned are served in part by other sections of 22–1115, but they are also served, and I think much better served, by a law passed by the Congress in 1972, the Act for the Protection of Foreign Officials and Official Guests. That act was passed shortly after the assassination of the Israeli Olympic athletes at Munich. I think the bill had been in the hopper before that, but that is what finally pushed it through, because of the great sensitivity to the need to protect people against that kind of violence. The act went through careful legislative consideration, and thoroughly serves the necessary purposes of protecting diplomatic people and diplomatic property, and applies throughout the rest of the United States, the 50 States, and the Territories, except in the District of Columbia. It was not made applicable in the District, apparently, because Congress was informed that we had a comparable local statute that solved the problem. In fact, though, the comparable local statute has terrible constitutional problems. We think that the simple repeal of section 1115 and its replacement with the existing Federal statute which is codified in two sections of title XVIII of the United States Code, would leave the police authorities with the same, fully adequate ability to deal with these problems that the police have in New York and Chicago and everywhere else around the country.

LAWS OF COMITY AND RECIPROCITY

I might make one final point about international law and reciprocity. I think the point has usually been made in defending this statute, that's why it is really needed, because foreign governments provide similar protection to our embassies abroad, and we need to follow the laws of comity and reciprocity in international relations. Well, the concepts of comity and reciprocity are certainly important ones. I do not think it is a fact that our embassies abroad are protected against peaceful demonstrations by citizens nearby. I can remember not long ago—I think it was at the time of the military operation in Grenada—that the Russian Government set up a peaceful demonstration in front of the U.S. Embassy in Moscow. They handed out English language signs to a bunch of Russian citizens, who I gather had been bussed there, and they paraded up and down in front of the American Embassy in order to make the front page of the Washington Post. But I do not think there is anything objectionable about that, and I do not think there is any reason why we should want our embassies abroad to be shielded from peaceful picketing. Even if, however, that was the practice abroad, I do not think that international practice can be an excuse for violating the rights of American citizens under the U.S. Constitution. What makes our country so great—one of the things that makes our country so great—is the uniqueness of its Constitution and the breadth of first amendment protection that we have here. And that protection cannot be taken away on the ground that other countries do not give the same protection to their citizens.

Thank you.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Spitzer. We very much appreciate your testimony. We have the statement which you have presented, it will be made a part of the record in full.

That concludes panel one.

[The statement follows:]

STATEMENT OF ARTHUR B. SPITZER

Mr. Chairman and Members of the Subcommittee, my name is Arthur B. Spitzer and I am the Legal Director of the American Civil Liberties Union of the National Capital Area, on behalf of which I am testifying today. The ACLU of the National Capital Area is the Washington, D.C. area affiliate of the American Civil Liberties Union.

We appreciate the opportunity to present our views on Section 22-1115 of the District of Columbia Code. Our view can be summed up in a word: it is unconstitutional.

Section 1115 is a criminal statute adopted by Congress in 1938. It prohibits, upon pain of fine and imprisonment, the display of any "flag, banner, placard, or device" within 500 feet of any embassy or other building used by foreign diplomats for their official purposes, but only if the display is "designed or adapted" to bring the foreign government or its officials "into public odium" or "into public disrepute."*/

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*/ As written, the statute makes it unlawful to perform these acts within 500 feet of any such building regardless of which government is the object of the criticism. We understand, however, that the statute is only enforced to prohibit such demonstrations within 500 feet of the buildings occupied by diplomats of the nation being criticized. This sometimes results in the anomolous situation of, for example, demonstrators protesting the British policy in Northern Ireland picketing in front of the Brazilian Embassy, 500 feet down the road from the British Embassy.

The statute also prohibits, within the same areas, the display of flags, banners, placards or devices that are designed or adapted to "intimidate, coerce, [or] harass" foreign diplomats, or to interfere with their "free and safe pursuit of the[ir] duties." If these terms are properly interpreted and applied, we would not object to the enforcement of these provisions. However, as pointed out below, we believe that the legitimate purposes underlying these provisions are fully served by other federal statutes, already on the books, that apply to foreign diplomatic personnel in all 50 States, and by other sections of the District of Columbia Code.

Thus the statute would permit a person to stand in front of the French Embassy with a sign reading "Vive Mitterand" but would make the same person a criminal if his sign read "Mitterand Should Resign." Or a demonstrator could picket in front of the South African Embassy with a sign commending that government on its race relations policy, but a demonstrator whose sign criticized the Apartheid policy is required to picket nearly two football fields away -- completely out of sight of the embassy and its personnel. Indeed, a person is allowed to hold up a sign within 500 feet of the embassy expressing his or her views on any other subject -- the need for a new D.C. Jail, or for a new Fire Chief, or for a Redskins victory -- anything except a criticism of a foreign country or its officials.

What the statute does, then, is to discriminate among speakers based on the content of their speech. Such "content discrimination" is _the clearest_ form of unconstitutionality under the First Amendment. It has been repeatedly and unambiguously condemned by the Supreme Court.

In _Police Department of Chicago v. Mosley_, 408 U.S. 92, 95-96 (1972), the Supreme Court made this explicit, stating:

> _[A]bove all else_, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. . . .
>
> Necessarily, then, . . . government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views.

I am not aware of any Supreme Court decision that has ever upheld a law that permitted only one side of an issue to be discussed in a public forum such as a city street or a park. The impermissibility of such content distinction is universally regarded as a basic proposition of First Amendment law. If a law student asked her professor for a simple example of a law that would clearly violate the First Amendment, the example likely to be given would be a law just like D.C. Code § 22-1115.

To be sure, there is a valid and very important Congressional purpose underlying Section 1115: protecting the security of the property and the safety of the diplomatic representatives of foreign nations. Our recent experiences in Iran and elsewhere certainly highlight the importance of such protection. But this purpose is _fully_ served by the provisions of a more recent and more comprehensive Congressional statute, as well as by the generally applicable provisions of District of Columbia law.

In 1972, Congress passed the Act for the Protection of Foreign Officials and Official Guests of the United States (Pub. L. 92-539, 86 Stat. 1070). Section 301 of that Act, codified (as subsequently amended) at 18 U.S.C. § 112(b), provides that a person is guilty of a crime if he willfully

> (1) intimidates, coerces, threatens, or harasses a foreign official or an official guest or obstructs a foreign official in the performance of his duties;
>
> (2) attempts to intimidate, coerce, threaten, or harass a foreign official or an official guest or obstruct a foreign official in the performance of his duties; or
>
> (3) within the United States but outside the District of Columbia and within one hundred feet of any building or premises in whole or in part owned, used, or occupied for official business or for any diplomatic, consular, or residential purposes by [a foreign government or official], congregates with two or more other persons with intent to violate any other provision of this section.

Section 401 of the Act, codified (as subsequently amended) at 18 U.S.C. § 970, similarly makes it a federal crime for a person willfully, with the intent to intimidate, coerce, threaten or harass, to "forcibly thrust any part of himself or any object" into any building used for diplomatic purposes, or to "refuse to depart from such . . . premises after a request." Thus, existing Congressional legislation provides comprehensive protection for both diplomatic property and diplomatic personnel.

Notably, Congress took care in the 1972 Act to indicate on the face of the statute its concern that the rights of United States citizens peacefully to express their views should not be infringed by any overbroad interpretation of the statutory language:

> (d) Nothing contained in this section shall be construed or applied so as to abridge the exercise of rights guaranteed under the first amendment to the Constitution of the United States.

The 1972 Act is considered by the United States Government to provide adequate protection to foreign diplomats and their property all across the United States, including in New York City, the headquarters of the United Nations and the residence of many foreign diplomats of ambassadorial rank. Congress did not extend this Act to the District of Columbia only because it was informed that "a District law of long standing affords similar protection to foreign officials in the Nation's Capital." S. Rep. No. 92-1105, reprinted in 1972 U.S. Code Congressional and Administrative News 4316, 4328. But, as shown above, the "District law" referred to in fact goes far beyond providing "similar protection," and disregards the very constitutional protections that Congress was careful to include in the more recent nationwide legislation.

Generally applicable District of Columbia laws also provide any necessary protection for diplomatic property and personnel. See, e.g., D.C. Code §§ 22-1107 (unlawful assembly); 22-1121 (disorderly conduct); 22-3102 (unlawful entry on property).

Unfortunately, the legitimate governmental interest of protecting the persons and property of foreign nations from harm is not the only interest served by Section 22-1115. The actual purposes of that statute -- as explained on the floor of the Senate by its sponsor, Senator Pittman -- include the protection of foreign diplomats from having to see or hear any public criticism of their nations' policies. See 81 Cong. Rec. 8587-8592 (1937), cited in Zaimi v. United States, 476 F.2d 511, 520-21 (D.C. Cir. 1973). But this is simply not a legitimate purpose for a law passed in this country, under our Constitution. Similar statutes (even though content-neutral) attempting to prohibit all demonstrations on the grounds of the Capitol or of the Supreme Court, have been struck down by the Supreme Court. See Jeanette Rankin Brigade v. Chief of Capitol Police, 342 F. Supp. 575 (D.D.C.), aff'd mem., 409 U.S. 972 (1972); United States v. Grace, 103 S. Ct. 1702 (1983).

Section 22-1115 has been twice upheld by the lower federal courts. See Frend v. United States, 100 F.2d 691, 69 U.S. App. D.C. 280 (D.C. Cir. 1938), cert. denied, 306 U.S. 640 (1939); Jewish Defense League v. Washington, 347 F. Supp. 1300 (D.D.C. 1972).[*] We believe these cases were wrong when they were decided, and that they are even more clearly wrong in light of current Supreme Court law. Both of these decisions rest primarily on the importance of the need to protect foreign diplomats from harm, but, as shown above, the statute goes far beyond what is necessary or reasonable to protect that interest.

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[*] Section 22-1115 was also at issue in two other cases. Zaimi v. United States, 476 F.2d 511, 155 U.S. App. D.C. 66 (D.C. Cir. 1973), involved an Iranian who shouted at the Shah of Iran from across the street. The D.C. Circuit held that the statute did not prohibit oral speech, and therefore did not reach Zaimi's constitutional challenge to the law. However, the court's discomfort with the statute is apparent between the lines. In Jews for Urban Justice v. Wilson, 311 F. Supp. 1158 (D.D.C. 1970), the court was unwilling to consider the constitutionality of the statute on the merits in passing on an application for a temporary restraining order against its enforcement.

Another case challenging Section 22-1115, Brown and Faron v. United States, is now pending in the District of Columbia Court of Appeals.

These decisions also rested on the statute's policy of protecting foreign diplomats against any "offensive demonstration," "insult," or "annoyance." *Frend v. United States*, *supra*, 100 F.2d at 693. But whatever the law may have been in 1938, it is elementary today that the First Amendment denies Congress the power to pass laws to protect people against "insult" or "annoyance" that is caused simply by the peaceful expression of critical views about subjects of public concern.

The two decisions upholding the statute also reflect a concern that the United States must, under international law, provide protection for foreign diplomats commensurate with that provided to our diplomats abroad. This is certainly a legitimate concern. But the fact is that there is no principle of international law prohibiting *peaceful* demonstrations near embassies, and U.S. embassies abroad are not immune from and do not require protection against peaceful demonstrations.

Furthermore, even if foreign nations did extend such unnecessary and unwanted "protection" to U.S. embassies, that can provide no legal basis for the suppression of First Amendment freedoms *within the United States*. A treaty or international agreement that violates the Constitution is just as invalid as a statute that does so. The government cannot constitutionally enact a law that would permit picketing in front of the White House only if it applauds the incumbent administration. Nor could the government accomplish that same objective by agreeing, in a treaty with the Soviet Union, that both nations would only allow pro-government picketing in front of their respective Executive Mansions. The validity of a U.S. law must be judged under the standards of the United States Constitution, and if it fails to pass that muster, it cannot be saved because it might be valid under the laws of other nations.

The commendable sensitivity to constitutional rights that Congress displayed in its careful legislation on this subject in 1972 should be extended to the District of Columbia. It appears that this was not done at that time only because Congress believed that the existing local statute was "similar" to the law it was about to enact. Unfortunately, the facts are otherwise: Section 22-1115 is not narrowly tailored to protect the safety of diplomats, but sweeps broadly to censor speech that diplomats might be "annoyed" to hear.

In our view, it is grossly offensive to constitutional values that a U.S. citizen can be sent to prison simply because he or she stands peacefully on a public street holding up a sign saying "Russia out of Afghanistan" or "Solidarity" or "Apartheid is Evil." There is no reason to believe that professional diplomats need to be protected against seeing such signs. There is certainly no reason to believe that they need such protection more in the District of Columbia than they do in New York or Chicago or Los Angeles. And there is emphatically no reason why the residents of the District deserve less protection of their constitutional rights under the First Amendment than residents of the other 50 States and the several Territories. D.C. Code § 22-1115 ought to be repealed, and replaced with the fully adequate protections found in the federal criminal law, 18 U.S.C. §§ 112 and 970.

DEPARTMENT OF STATE

STATEMENT OF ROBERT LAMB, ASSISTANT SECRETARY FOR ADMINISTRATION

INTRODUCTION OF WITNESSES

Senator SPECTER. I would like now to call on Mr. Robert Lamb, Assistant Secretary for Administration, Department of State; John Keeney, Deputy Assistant Attorney General, Criminal Division, Department of Justice; Thomas Quinn, Acting Deputy Assistant Director, Uniform Division, U.S. Secret Service; Thomas Downs, City Administrator/Deputy Mayor for Operations, District of Columbia; Chief Maurice Turner, Metropolitan Police Department, and Deputy Chief John C. Connor, Director of Special Operations.

We will just take a 1-minute break while the panel seats themselves.

[A brief recess was taken.]

Senator SPECTER. I thank all of you for joining us here.

Let us begin, Secretary Lamb, with you.

All statements will be made a part of the record in full, and to the extent possible, we appreciate summaries, so we can reach the kinds of issues and considerations which we have addressed preliminarily today.

SECURITY OF DIPLOMATIC FACILITIES

Mr. LAMB. Senator, if I may just summarize briefly, it is a well established and widely recognized principle of international law that the host government has responsibility for the security of the diplomatic and consular facilities represented in the country. This obligation is codified in the Vienna Convention and was ratified by the Senate.

But the protection of foreign diplomats in the United States is more than just a legal obligation. It is in our Nation's self-interest.

There has been a great deal of public attention over the past year to the security of our missions abroad. But there has been less public recognition of our responsibility domestically to ensure adequate protection of foreign diplomatic and consular establishments represented in this country.

But the two efforts are directly linked. When we demand the extraordinary levels of security which our facilities abroad require, host governments look to the level of protection which we accord their facilities in the United States. The effectiveness of our domestic efforts is the basic underpinning for the security of our embassies abroad.

PREPARED STATEMENT

I will submit the rest of my statement for the record, but I would like to say that these are particularly troubled times for us in the diplomatic field. Security experts say that, before the summer, we will have an attack against one of our embassies abroad which will cause a major loss of life. Statistically, we can expect two of those in this calendar year, according to the security experts. And this is not the time for us to take any measures which would relax the kind of security which we provide to missions in the United States which would, in turn, enable governments abroad, that we are putting very heavy demands on, to look at the kind of security they are providing to us and to relax it in turn.

Thank you, sir.

[The statement follows:]

STATEMENT OF ROBERT E. LAMB

Mr. Chairman, I appreciate the opportunity to appear before the committee regarding restrictions on demonstrations at foreign diplomatic and consular facilities. I am accompanied today by David C. Fields, Deputy Assistant Secretary for Security, and by Knute Malmborg, Assistant Legal Advisor.

It is a well established and widely recognized principle of customary international law that the host government has the obligation to protect foreign diplomatic and consular facilities. This obligation was codified in the Vienna Convention on Consular and Diplomatic Relations in 1961. These conventions were ratified by this body.

The protection of foreign diplomatic facilities is more than a legal obligation however; it is in our Nation's self-interest.

There has been a great deal of public attention over the past year to the security of U.S. Missions abroad. There has been less public recognition of our efforts domestically to ensure adequate security protection for the foreign diplomatic and consular establishments and representatives resident in this country.

But the two efforts are directly linked. When we demand the extraordinary levels of protection which our facilities abroad require, the host government looks to the level of protection which we accord their facilities in the United States. The effectiveness of our domestic efforts is the basic underpinning for the security of our embassies abroad.

In these times the threat to foreign diplomats is as great as it has ever been. World events can create high emotions for and against foreign governments and international issues. The taking of our hostages in Tehran is but one, albeit an obvious example. The appearance of Iranians drew spontaneous, and sometimes violent, demonstrations. In such an emotional atmosphere, demonstrations near an embassy or other official foreign government building, even if they begin peacefully, can quickly become unruly or violent.

In such instances, our Nation's obligation to protect foreign embassies and missions cannot be dependent upon our agreement with the policies of the government concerned.

In the opinion of the Department's security professionals, 22 D.C. Code 1115 provides an essential tool for law enforcement agencies to fulfill our responsibilities under international law. It also strengthens the hand of our security officers abroad in dealing with foreign governments on the protection of our embassies.

In closing, Mr. Chairman, I would like you to be aware of this Department's appreciation to the Washington Metropolitan Police and the Uniformed Division of the Secret Service for their professionalism in protecting foreign diplomats and facilities. Without their excellent work in the United States, it would be more difficult for us to secure adequate protection for our personnel and properties abroad.

Thank you, Mr. chairman.

DEMONSTRATORS

Senator SPECTER. Mr. Lamb, the subcommittee totally agrees with the point you make about security. But is this provision of law reasonably related to security and keeping peaceful demonstrators more than 500 feet away from the embassy door?

Mr. LAMB. Sir, we think it is.

Senator SPECTER. In what way?

Mr. LAMB. This law is not aimed at the peaceful demonstrators, but the line between the peaceful demonstrator and the terrorist is a very thin one. Most American citizens are very law-abiding. We know that we can trust most of the American citizens to demonstrate in front of an embassy and not harass and not to abuse and not to intimidate. But we cannot have laws for most of the people. We have to have laws that protect these embassies against all of the people, against the extraordinary person, and they have to be laws that can be applied uniformly. And we think that the 500-foot rule is a proper compromise, a proper balance, between the constitutional provisions and our legitimate need to provide security for these missions.

Senator SPECTER. Mr. Lamb, why wouldn't it be sufficient to have a 400-foot rule?

Mr. LAMB. Sir, I think if we were looking at this afresh, there is a question as to whether we would come to you with a 450- or 475-foot rule. In fact, this is a well-established provision of law. It goes back to 1937. The constitutionality of the law has been challenged and has been upheld, most recently in *Fencer* v. *Barry*, I believe, and it is a law that is understood, it is clear, it is enforceable and has been reasonably enforced by the Secret Service Uniformed Division and the District government.

Senator SPECTER. So your position is, speaking for the Department of State, that you feel you need this law to provide physical protection.

Mr. LAMB. Yes, sir, we do. There is another element to this, another dimension, in the sense that because the law exists, we certainly think the time is wrong to send a message to these 136 embassies represented in Washington that we are relaxing the security that we are providing to them.

Senator SPECTER. Well, why would there necessarily be a relaxation of our security if we say that people who want to express their sentiments in opposition to a foreign government's policies may hold up a sign within sight of the embassy? How does that really impact on security? Is somebody going to misread the security issue if we were to say that?

Mr. LAMB. I think a reduction in the 500-foot rule would be read as a relaxation. There is an opportunity that really has not been expressed here, for people to make their views known to the foreign embassies. These demonstrators, in fact, are allowed—a small group of the demonstrators, representatives of the demonstrators—are allowed to present petitions to embassies and to make their views known to the embassies. I think one can understand the reasonableness of not allowing a large group to approach an embassy.

I do not believe that there is an instance where an embassy does not know that a demonstration is taking place. Judging from my own experience overseas, when there was a demonstration against the American Embassy, we knew when the demonstration took place, how many people were participating, and what the issues were, the reasons for the demonstration. And I suspect that the same thing occurs in the United States.

Senator SPECTER. Mr. Lamb, do you think that the South African Embassy prefers a policy of arresting demonstrators 500 feet away, or would they prefer the lesser attention of having people closer and not arrested?

Mr. LAMB. I do not know the South African Government's views, sir, and I think it is a mistake to look at this law in terms of the South African Government. We are represented at 262 posts overseas. We have 136 countries represented here in Washington, and this is a law that applies to all of those countries. We cannot use as a measure for the enforcement of the law, whether we agree or disagree with the policies of that country.

Senator SPECTER. Well, I am not suggesting that we should. I am raising the point as to whether the South African Government feels that there is a real security issue here. Do you know that they do?

Mr. LAMB. Sir, I have every indication that the South African Embassy officials are concerned about their security in these demonstrations, yes, sir.

SECURITY AND PROTECTION NEEDS

Mr. FAUNTROY. May I ask just one question?

Senator SPECTER. Yes; by all means.

Mr. FAUNTROY. Mr. Lamb, the Senator has indicated that we certainly agree that security and protection of diplomatic corps should be effected. I wonder if you could describe to me what security and protection needs are served by the 500-foot limitation that could not be served by, say, the 300-foot limitation—rather than merely two football fields and one football field?

Mr. LAMB. I think the issue, sir, is to keep the demonstrators a sufficient distance from the building, so that if the crowd were to become unruly, were even to become violent, that there is a sufficient buffer for the law enforcement people in the District of Columbia to provide protection.

Mr. FAUNTROY. So that buffer could be filled, you feel, adequately at 500 feet, but not at 300 feet?

Mr. LAMB. Sir, the law is 500 feet, and I certainly think that it would be a bad signal for us to send to the foreign governments today, given the very heavy demands that we are placing on them for the protection of our facilities, for us to take any step that might be interpreted as a relaxation of existing law.

Mr. FAUNTROY. So the question is not security and protection, really, but your testimony is the appearance of relaxing?

Mr. LAMB. Sir, I find it hard to distinguish. When we are talking about the security of our embassies overseas, I find it hard to distinguish between the appearance and the substance.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Senator SPECTER. Thank you, Congressman Fauntroy.

DEPARTMENT OF JUSTICE

STATEMENT OF JOHN C. KEENEY, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION

Senator SPECTER. I would like now to turn to Mr. Keeney, Deputy Assistant Attorney General of the Criminal Division. Thank you for joining us, Mr. Keeney.

Mr. KEENEY. Senator, you have my statement, and I would just like to summarize it in a 1-minute summary.

We agree with you that the picketing provision of 22–1115 is not content-neutral. However, we do not think that disposes of the issue. In our view, reasonable and proper restrictions, narrowly drawn to further a substantial governmental interest, need not be content-neutral. Now, we find that substantial governmental interest in an international obligation. We are a member of a family of nations, and we have an obligation within that family to do certain things. We find that a substantial governmental interest.

We find the restrictions limited. They are limited in several ways. They are limited to 500 feet. The placards can be shown freely 501 feet from the embassies. We also note the fact that the only first amendment limitation is on the carrying of those placards within the 500-foot restriction. We are confident that, if this issue should ever go to the Supreme Court, they will confirm what the Court of Appeals in the District of Columbia has been confirming and affirming for over 40 years, namely, that this is a valid, reasonable restriction which enables the Government of the United States to carry out its international obligations.

That is my statement, Senator.

PREPARED STATEMENT

Senator SPECTER. Thank you, Mr. Keeney, for summarizing your statement. We have your complete statement and it will be placed in the record.

[The statement follows:]

STATEMENT OF JOHN C. KEENEY

Mr. Chairman, I appreciate the opportunity to appear before the District of Columbia Subcommittee today to discuss the provisions of the District of Columbia and United States Codes which restrict demonstrations at foreign embassies and other premises owned or occupied by foreign governments.

I. STATUTES

I will discuss three statutes. The first is section 22-1115 of the District of Columbia Code. That section prohibits displaying, within 500 feet of premises in the District of Columbia occupied by a foreign government for official purposes, any "flag, banner, placard, or device" which is designed to intimidate. coerce, or bring into public disrepute any foreign government.[1] It also prohibits congregating within 500 feet or any such premises and refusing to disperse after an order to do so by the police.[2] Violations of the statute are punishable by imprisonment for up to 60 days and by a fine of up to $100.[3]

The second provision is section 112(b)(3) of title 18, United States Code. Section 112(b)(3) prohibits congregating with two or more other persons with intent to intimidate, coerce, or harass a foreign official.[4] Violations are punishable by fines of up to $500 and imprisonment for up to six months.

Section 970(b) of title 18, United States Code, prohibits throwing things into or refusing to depart from buildings or premises owned or occupied by foreign governments if the offender possesses the intent "to intimidate, coerce, threaten, or harass." Violations are punishable by fines of up to $500 and imprisonment for up to six months.

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[1] Zaimi v. United States, 476 F.2d 511 (D.C. Cir. 1973), held that the statute is applicable only when there is display of a "flag, banner, placard, or device," except that the congregation clause requires no such display.

[2] Excepted from the prohibition is picketing "as a result of bona fide labor disputes regarding the alteration, repair, construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments." See D. C. Code § 22-1116.

[3] See D.C. Code §22-1116.

[4] Section 112(b)(3) is applicable within the United States but outside the District of Columbia.

II. LEGAL ANALYSIS

The first amendment does not permit unlimited access to all places in the name of free speech. For example, the Supreme Court has found no violation of the Constitution by laws regulating picketing near a court house [5/] and prohibiting noise or disturbances which would disrupt the peace or good order of schools.[6/]

Not only does reason dictate that the peace and good order of premises owned and occupied by foreign governments for official business must be protected, but both the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations require that diplomatic and consular premises be protected "against any intrusion or damage and . . . any disturbance of the peace of the [appropriate foreign premises] or impairment of its dignity." 7/

The leading case concerning demonstrations in the proximity of official foreign premises is Frend v. United States, 100 F.2d 691 (D.C. Cir. 1938), cert. denied, 306 U.S. 640 (1939). In the Frend case, defendants were charged with violating a predecessor section to D.C. Code § 22-1115 by parading in the street in front

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5/ Cox v. Louisiana, 379 U.S. 559 (1965); cf. Cameron v. Johnson, 390 U.S. 611 (1968).

6/ Grayned v. City of Rockford, 408 U.S. 104 (1972); cf. Clark v. Community for Creative Non-Violence, 52 U.S.L.W. 4986 (U.S. S.Ct., June 29, 1984) (regulations prohibiting camping in parks upheld in face of First Amendment challenge); Members of City Council of Los Angeles v. Taxpayers for Vincent, 52 U.S.L.W. 4594 (U.S. S.Ct., May 15, 1984) (municipal ordinance prohibiting signs on public property upheld in face of First Amendment challenge); Greer v. Spock, 424 U.S. 828 (1976) (rejecting contentions of candidates for President and Vice President that First Amendment authorized their distributing campaign literature and holding political meetings on military post); Lehman v. City of Shaker Heights, 418 U.S. 298 (1974) (municipal ordinance prohibiting political advertising on public rapid transit system upheld in face of First Amendment challenge).

7/ See Article 22(2) of the Vienna Convention on Diplomatic Relations; Article 31(3) of the Vienna Convention on Consular Relations.

of a foreign embassy with people, some of whom had carried banners or placards containing language intended to bring the foreign government into contempt. In upholding the statute against an attack based, in part, on the First Amendment provisions protecting press, speech, and assembly, the United States Court of Appeals for the District of Columbia stated that,

> As in war the bearers of flags of truce are sacred, or else wars would be interminable, so in peace ambassadors, public ministers, and consuls, charged with friendly national intercourse, are objects of especial respect and protection 8/

Similarly, in the case of Jewish Defense League, Inc. v. Washington, 347 F. Supp. 1300 (D.D.C. 1972) (three judge court) (per curiam), the court denied plaintiffs' request for a preliminary injunction against enforcement of the District of Columbia statute stating that, if the injunction were granted, "the United States might suffer irreparable injury . . . . [T]he obligation of the United States is to protect the foreign governments and their representatives from the type of actions listed in section 1115."9/

Consequently, it is our belief that D.C. Code § 22-1115, 18 U.S.C. § 112(b)(3), and 18 U.S.C. § 970(b)(2) are well within the constitutional line between permissible and impermissible regulation of demonstration activity.

III. ENFORCEMENT POLICY

Both the 1972 Act for the Protection of Foreign Officials and Official Guests of the United States 10/ and the 1976 Act for the Prevention and Punishment of Crimes Against Internationally

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8/ 100 F.2d at 693 (quoting an 1851 message to Congress from President Fillmore). The court construed the permit provision to allow only permits for demonstrations otherwise not prohibited by the statute. Id. at 694.

9/ 347 F.Supp. at 1302; see Jews for Urban Justice v. Wilson, 311 F.Supp. 1158 (D.D.C. 1970); Finzer v. Barry, Civ. No. 84-0899 (D.D.C., May 17, 1984); cf. Concerned Jewish Youth v. McGuire, 469 F.Supp. 1296 (S.D.N.Y. 1979), aff'd. 621 F.2d 471 (2d Cir. 1980), cert. denied, 450 U.S. 913 (1981).

10/ Public Law 92-539, 86 Stat. 1072, 18 U.S.C. 112 (1972).

Protected Persons [11] included provisions which specifically provide against federal pre-emption of state and local laws which would be applicable to offenses against foreign officials and foreign premises. Indeed, the Attorney General and the Secretary of State wrote in a letter to the Speaker of the House of Representatives that "the prime responsibility to investigate, prosecute and punish common crimes such as murder, kidnaping and assault remains in the several States" but that the legislation would "extend to the United States jurisdiction, concurrent with that of the States, to proceed against those acts committed against public and foreign officals which interfere with its conduct of domestic and foreign affairs." 12/ In view of these legislative provisions against preemption, it is Department of Justice policy that, for demonstrations near premises occupied for official business by foreign governments, local police should take the primary responsibility for maintaining order and making any necessary arrests. We prefer that federal agents act only in those isolated instances where local officials fail to carry out their responsibilities or have insufficient statutory authority to provide the requisite protection to foreign officials or premises. 13/

Mr. Chairman, that concludes my statement. I will be happy to answer questions at this time.

11/ Public Law 94-467, 90 Stat. 1999, 18 U.S.C. 970 (1976).

12/ H.R. Rep. No. 92-1268, 92d Cong., 2d Sess. 13 (1968)(setting out Secretary of State and Attorney General letter).

13/ See United States Attorneys' Manual §§ 9-65.880 to 9-65.882.

CONTENT NEUTRALITY

Senator SPECTER. Mr. Keeney, has there been any test of the provision on the lack of content neutrality in this section?

Mr. KEENEY. It has been tested here in the D.C. circuit——

Senator SPECTER. Well, the aspect of content neutrality has not been, has it?

Mr. KEENEY. It has been tested in the leading case here on the subject. The whole idea is that it is content neutrality——

Senator SPECTER. Are you talking about the decision in the 1930's?

Mr. KEENEY. Yes, sir.

Senator SPECTER. Did that case take up specifically the issue of the absence of content neutrality in this provision?

Mr. KEENEY. It is implicit in that and the subsequent decisions, the concept of neutrality. Now, that is most recently reflected in a decision here by a panel of the D.C. circuit.

I think the issue is before the court. I think the court is aware of the fact that this is not a content-neutral statute, but nonetheless, they have repeatedly upheld it as a valid governmental limitation——

Senator SPECTER. Can you refer me to any specification in any Federal court decision which says that even though this statute is not content neutral, it passes constitutional muster?

Mr. KEENEY. Senator, there are a lot of analogous situations where the limitations have been upheld, where there were demonstrations outside of courts, outside of schools, and so forth, and the courts have upheld it.

Senator SPECTER. Well, let us deal first with this statute. Has there been any Federal court decision which upholds 22–1116 with specific reference to the fact that it is not content neutral?

Mr. KEENEY. Yes, sir, Pencer, here in the District of Columbia.

Senator SPECTER. And what is the specific reference?

Mr. KEENEY. Civil Action No. 84–0899. It was an action to enjoin the enforcement of this statute, and the application for an injunction was denied.

Senator SPECTER. Well, does the court deal with the contention that it is unconstitutional because it is not content neutral?

Mr. KEENEY. I am looking at it here. Yes; they specifically do, sir.

Senator SPECTER. What do they say?

Mr. KEENEY. They say, "Demonstrations in opposition to the policies of a foreign government are obviously more likely to result in violence against foreign personnel or property than demonstrations in support of a foreign government."

They are making the distinction you made yourself, Senator——

Senator SPECTER. Now, wait a minute. That does not deal with content neutrality. Do they say that——

Mr. KEENEY. It certainly does. What they are talking about is that it is necessary for the protection of the personnel and property of foreign governments located in Washington, DC, and demonstrations in opposition are more likely to place in jeopardy the security of those embassies than demonstrations in favor of the policies of that particular government.

I have no problem in concluding that they have considered it, and they have considered the distinction you make, Senator, with respect to content neutrality when they come down on the side of the validity of the statute.

Senator SPECTER. Do they say that there is a challenge because of the absence of content neutrality?

Mr. KEENEY. They discuss content neutrality and conclude that there is a distinction to be drawn, where the demonstration is in opposition to the policies of the government that that embassy represents.

Mr. FAUNTROY. Would the gentleman yield?

Senator SPECTER. By all means.

Mr. FAUNTROY. Is the distinction drawn here between a demonstration——

Senator SPECTER. Excuse me, Congressman Fauntroy.

Mr. Keeney, would you let me see the case while the Congressman is asking the question?

Mr. KEENEY. Yes.

DEMONSTRATIONS IN SUPPORT OF OR AGAINST FOREIGN GOVERNMENTS

Mr. FAUNTROY. Is the discussion here a discussion of the distinction between a demonstration in support of and a demonstration in opposition to a foreign government?

Mr. KEENEY. Yes, sir—in opposition or in favor of the policies of a foreign government.

Mr. FAUNTROY. So it is a justification for prohibiting demonstrations in opposition, but allowing demonstrations in support?

Mr. KEENEY. Yes, sir. So therefore, they are not content neutral. They are not proscribing any demonstration; they are proscribing a demonstration which is in opposition to the policies. And the rationale is that a demonstration in opposition to the policies of a foreign government in front of its embassy is more likely to put in jeopardy the security of the embassy personnel and its premises than is a demonstration in favor of the policies of the government.

Mr. FAUNTROY. Does the court suggest that such content neutrality is consistent with what we do with respect to the Members of Congress and the President?

Mr. KEENEY. I am sorry, would you repeat that?

Mr. FAUNTROY. Does the court suggest that what we do with respect to embassies is consistent with the protections we afford Members of Congress and the President?

Mr. KEENEY. Congressman Fauntroy, I read the case as a recognition by the courts that in the area of foreign affairs, when we are dealing with a foreign embassy or foreign premises, the courts are inclined to be more tolerant of demonstrations that are directed at our executive buildings or at our judicial buildings than they are with respect to demonstrations directed at a foreign embassy. And the reasons for that are a recognition of the fact that it is in in our national interest to do everything we can possibly do to protect the foreign embassies and foreign personnel, because we expect them to respect our property in their countries, and we expect them to respect our personnel abroad and to give them whatever protection can possibly be given.

Mr. FAUNTROY. And it is your view that the court in that decision addresses that question?

Mr. KEENEY. Yes, sir.

Mr. FAUNTROY. Thank you, Mr. Chairman.

Senator SPECTER. Mr. Keeney, would you supply the subcommittee with the pleadings in the case and the issues raised by the complainant answer?

Mr. KEENEY. Yes, sir.

Senator SPECTER. I would like to see that. The specific section you refer to does not refer to the subject content neutral, but at an earlier point, the court does use the term "the challenge of content neutrality under the Equal Protection Clause." But I would like to see the pleadings in the case as well, to have a fuller picture of the specific issue which was raised.

Mr. KEENEY. We will supply that.

SECTION 22-1115 IS A VALID STATUTE

Senator SPECTER. Mr. Keeney, do you think that this section 22-1115 is as narrowly drawn as a section could be and still protect the interests of providing security for foreign embassies?

Mr. KEENEY. Well, Senator, you and I might disagree as to whether or not it should be 400 feet, 300 feet, or 200 feet, or even the 100 feet in title XVIII. But in my view, what we might think or not think about the restriction and whether it should be narrower is not constitutionally mandated. I think that what we are dealing with here is a valid statute, which is sustainable under the first amendment. And whether or not there might be better ways of doing it, I do not think is the issue——

Senator SPECTER. Well, I do not know about that, Mr. Keeney. The court is pretty plain that you have to draw these statutes as narrowly as you can, consistent with the protection of a serious governmental issue.

In 18 U.S.C. 1112, the provision is for 100 feet, and the question would then arise why is 500 feet necessary in the District of Columbia, when 100 feet is considered adequate at foreign missions elsewhere in the United States.

Mr. KEENEY. Well, I think my colleagues here on the panel can address the issue better than I, but the distinction between—the 500-foot limitation was a matter of which the Congress was aware when they enacted the legislation, and one piece of that legislation has no applicability in the District of Columbia. And, except for the possibility of New York City, where we have the United Nations, the security problem in other major cities in the United States is nowhere near the magnitude of the security problems here in the District of Columbia, where we have all these embassies.

Senator SPECTER. Well, let us turn to some of the other gentlemen—Congressman Fauntroy, do you have any more questions?

Mr. FAUNTROY. No, Mr. Chairman.

DEPARTMENT OF THE TREASURY

STATEMENT OF THOMAS D. QUINN, ACTING DEPUTY ASSISTANT DIRECTOR, UNIFORMED DIVISION, U.S. SECRET SERVICE

Senator SPECTER. Let us turn to Thomas Quinn, Acting Assistant Director of the Uniformed Division of the Secret Service.

We welcome you here, Mr. Quinn. Thank you for joining us. We look forward to your testimony.

Mr. QUINN. Thank you, Mr. Chairman.

The statement that I have has been submitted for the record.

Senator SPECTER. Yes.

Mr. QUINN. I would like to also introduce to you the Chief of the Uniformed Division, Fred Waszel, who is here with me today.

In summary, essentially, the Secret Service Uniformed Division enforces title III, section 202 of the United States Code, and in that, we have a responsibility to provide protection to the diplomatic community in Washington. In providing that, we have, we feel, a very difficult task, and it was mentioned earlier references to the White House, the President, and others.

The responsibility of the Secret Service in providing security to the diplomatic community, in our view, is an even more difficult one than providing security for the White House, not a less difficult one, because we are not in a position to have the same level of security in the diplomatic mission area of Washington, DC. We are not in a position to have the same barriers, buffer zones, and so forth, that we have at other locations. And one of the problems that we have every day is the fact that we are not in a position to infringe upon the facilities, the space of those foreign governments located in the city, and we have to provide security from their perimeter out. It makes it a much more difficult situation than if we were on the inside, as opposed to being on the outside, to provide that.

PREPARED STATEMENT

Senator SPECTER. Thank you, Mr. Quinn, for your very brief summary. We will place your statement in the record and proceed with the questions.

[The statement follows:]

STATEMENT OF THOMAS D. QUINN

MR. CHAIRMAN, and members of the District of Columbia Subcommittee, I appreciate this opportunity to discuss with you the role of the Secret Service in protecting foreign diplomatic missions.

Pursuant to the provisions of Title 3, Section 202 of the United States Code, the Secret Service Uniformed Division, in addition to other enumerated protective responsibilities, is authorized to protect all foreign diplomatic missions located in the District of Columbia as well as certain other diplomatic missions in areas outside the District of Columbia.

In many respects the obstacles confronting the Secret Service in providing security for foreign embassies, legations and consulates are much greater than those encountered in protecting personnel and property of the United States. At the White House and at the residence of the Vice President, for example, the Secret Service maintains a presence inside the structures which enables it to deploy a defensive network consisting of a number of manned perimeter posts radiating out from a centralized command center. The Secret Service's permanent on-site presence has also facilitated the installation of sophisticated equipment which enables Secret Service personnel to continuously monitor the area which surrounds the site. Although the task of insuring the safety of the White House complex and the residence of the Vice President is extremely difficult, it would be impossible were the Secret Service subject to the same diplomatic constraints that control Secret Service operations at foreign embassies, consulates, and legations.

The structures which house the diplomatic operations of foreign nations provide a tangible focal point to those wishing to demonstrate against the policies of the foreign government. Recent events underscore the fact that demonstrations near embassies or other official foreign government buildings, even if initially peaceful, exacerbate tensions and often lead to violent confrontations among the police, demonstrators and occupants of the protected premises. However, in contrast to the White House and other official buildings of the United States, Secret Service personnel are prohibited by international law and comity from entering onto the premises of a foreign embassy, legation, or consulate except with the expressed prior approval of the foreign government. Consequently, at such locations, the Secret Service by virtue of the above mentioned international law is put into a position where every available legal means must be introduced to guarantee the most secure environment possible.

In this context, it becomes clear that the buffer zones provided by section 22-1115 of the District of Columbia Code and section 112(b)(3) of Title 18 of the United States Code are essential if the Secret Service is to be able to provide a minimally acceptable level of security for foreign diplomatic personnel and property located in the United States. Yet as important as these buffer provisions are to the safety and well-being of foreign diplomatic personnel, they also serve to protect demonstrators and security personnel as well. The killing of a British policewoman and the wounding of a number of peaceful protestors in front of the Libyan embassy in London on April 16 of this past year underscore the importance of keeping demonstrators a safe distance away from diplomatic missions. While it may be that demonstrators have the option to jeopardize their own personal safety in order to express their views, security personnel who must always position themselves as a protective buffer between demonstrators and the occupants of protected premises do not. As the incident in London demonstrates, the police can be literally caught in the crossfire--with tragic results.

The need for an adequate protective buffer is particularly acute in the District of Columbia, which like London, is a national capital. The sheer number of, and the high visibility of, diplomatic embassies and missions located in the nation's capital distinquish Washington, D.C. from other cities in the United States, and may account for the fact that while the Secret Service is authorized by Congress to protect all foreign diplomatic missions located in the metropolitan area of the District of Columbia, the Secret Service's authority to protect such missions outside the Washington, D.C. area is much more restricted.*

The statutory restrictions on certain activity near foreign diplomatic missions constitute a vital element in the ability of the Secret Service to successfully carry out its protective mission as it pertains to foreign embassies, legations and consulates and missions. The protective buffers set forth in the District of Columbia Code and the United States Code strike a carefully calculated balance between a demonstrator's right to freely express his or her views and the need of the government to assure that the missions and embassies of foreign countries located in the United States remain secure and inviolate.

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* *See* 3 U.S.C. §202.

It is my opinion and the position of the United States Secret Service that the statutes restricting demonstrations and other activities in close proximity to foreign diplomatic missions in the United States are critical to minimize the very real threat to human life and safety that would otherwise exist.

MR. CHAIRMAN, that concludes my prepared remarks. I will be happy to answer questions at this time.

INTERACTION BETWEEN SECRET SERVICE AND D.C. POLICE

Senator SPECTER. Mr. Quinn, do you provide security for foreign missions elsewhere in the United States?

Mr. QUINN. No, sir, we do not.

Senator SPECTER. That is handled by the local police authorities in each of those cities?

Mr. QUINN. Yes; that is correct.

Senator SPECTER. What is the interaction between the Secret Service and the District of Columbia Police Department, Mr. Quinn? Who picks up where the other leaves off? Why don't the D.C. city police enforce this District of Columbia ordinance?

Mr. QUINN. Well, the Metropolitan Police Department of the District of Columbia does enforce this particular section of law——

Senator SPECTER. Isn't the Secret Service making the arrests within the 500-foot parameter?

Mr. QUINN. We work very closely with the Metropolitan Police Department. We are mandated to secure the embassies themselves. The Metropolitan Police Department generally establishes the 500-foot rule, establishes the police line, and we work inconjunction with them in making any necessary arrests. Most often, we defer to the Metropolitan Police Department for making those arrests.

Senator SPECTER. But haven't the arrests within the 500 feet been made by the Secret Service and not by the District of Columbia Police Department?

Mr. QUINN. No, sir. We have made some very few arrests regarding this; in this particular instance, the majority of the arrests are made by the Metropolitan Police Department. The arrest that was mentioned earlier, that Delegate Fauntroy mentioned, his own arrest, was made by Secret Service Uniformed Division personnel. It was made in that instance primarily because he was within the embassy itself; he was inside the embassy and refused to leave.

Senator SPECTER. What other situations, if any, does the Secret Service as a matter of policy make the arrest?

Mr. QUINN. Well, generally speaking, if it is something that is inside the embassy itself or on the embassy property, we generally are in a position to make the arrest. If it is something immediately outside the embassy, or a violation of the 500-foot rule or the police line, normally, the Metropolitan Police Department makes the arrest. But we work very closely with them, and we support each other in this regard.

Senator SPECTER. Questions, Mr. Fauntroy?

Mr. FAUNTROY. Yes.

RISKS OF DECREASING 500-FOOT LIMIT

Mr. Quinn, I asked a question of the Assistant Secretary for Administration that was probably unfair. I asked him what security needs might be met at 500 feet that could not be met at 200 feet or 300 feet. And I should have really reserved that question for you, because you have much more experience on the onsite provision of security and protection. I wonder if you would answer that question? What is it that is at risk at 300 feet that is not at risk at 500 feet?

Mr. QUINN. Well, there are really many technical factors here that come into play. There are operational factors for the Metropolitan Police Department and for the Uniformed Division of the Secret Service.

A buffer zone of 500 feet offers us a reasonable distance to work within to handle the wide range of demonstrations that you would face on a daily basis. It is not designed, as has been mentioned earlier, or directed at a particular government or a particular country. It is something that we need to have available to us to operate within when dealing with a wide range of possibilities within a demonstration—if a reserve force is needed, to have that reserve force available and to be able to disburse that force, if there is a need to, in sufficient time.

I do not think any of us would quibble as to whether it is 475 or 500, or whether it should be 525. The fact of the matter is that it is a 500-foot restriction, and we do not feel that it is appropriate for us to selectively enforce that statute; that we should enforce it as it is written. And it does in fact offer us, we feel, a reasonable buffer to operate within, and we strongly support and urge the maintenance of that restriction.

Mr. FAUNTROY. I do not want to push the point too vigorously, but what within 100 feet is possible and inadequate for such a limitation?

Mr. QUINN. Well, depending on the circumstances, 100 feet in some instances may be sufficient. But in many instances, you do not know whether 100 feet is going to be sufficient at the time.

It really depends on—if we are going to discuss the wide range of demonstrations, I think there may be instances. But the point is that we do not feel that we should selectively decide that, that the statute is clear that it is 500 feet, and that 500 feet, we feel is reasonable to handle the wide range of demonstrations that we come in contact with on a daily basis, and that whether it is 500 or 525 or 475 is not necessarily the issue.

You may feel 100 feet is sufficient. I personally do not feel that 100 feet is anywhere near sufficient to operate within if you have a demonstration that turns into disorder of some sort, and have an opportunity to respond in a reasonable manner to the demonstrators.

PROTECTION FOR THE DEMONSTRATORS

I think another thing that should be pointed out is that the 500-foot restriction should also be considered a protection for the demonstrators, as well, and I think this was ably pointed out to all of us in April 1984, when there were shots fired from within the Libyan Embassy in London, England, at the demonstrators and at the police personnel within that buffer zone. We feel it is important for our personnel to have an opportunity to operate within there, and we also feel a responsibility and an obligation to protect the public as well when they are involved in these demonstrations.

Senator SPECTER. Well, Mr. Quinn, the statute is not designed to protect the people who are demonstrating, is it, really?

Mr. QUINN. Well, the statute may not be designed to protect them, Senator, but——

Senator SPECTER. Well, that is not a purpose at all.

Mr. QUINN [continuing]. But we certainly have an obligation when there is a demonstration, not only to provide some level of safety—and I know this is a consideration for the Uniformed Division of the Secret Service, as well as the Metropolitan Police Department——

Senator SPECTER. Well, if you want to do that, you ought to limit embassy personnel from having guns, like the Libyans did. That is the way to protect people outside the embassy, not to say that the people outside the embassy cannot be close to the embassy. If you are referring to the murder of the British policewoman, that is an atrocious example, but the shoe was on the other foot. It is the embassy that got away with murder, not somebody trying to express a free opinion.

Mr. QUINN. But the point, Senator, is that the buffer zone of 500 feet offers us the opportunity to provide an element of safety to all of those involved in the demonstrations.

Senator SPECTER. Well, I cannot agree with you about that, Mr. Quinn. Your job there is not to provide safety for people who want to congregate and demonstrate. Their safety is not an issue here. This statute is designed to protect the embassy. And to the extent that this statute protects the embassy on the provision that says it is unlawful "to interfere with the free and safe pursuit of the duties of any diplomatic or consular representative of any foreign government," it is beyond any question, in my judgment. And that is the point that you make and the point that Mr. Keeney makes, and the point that Mr. Lamb makes, and I think you all make it very well, and that is a vital point. But where you deal with the other sections, one of which says it is unlawful to display any placard within 500 feet, how in the world can that be justified in terms of security?

Mr. QUINN. Senator, it is the sum total of the demonstration that takes place, and not a particular isolated instance. The 500 feet offers the law enforcement personnel present a buffer to operate within and to also assure that the foreign government has the opportunity to carry on their daily business.

SECURITY OF THE EMBASSY IS CRITICAL MATTER

Senator SPECTER. Mr. Quinn, I do not believe that you can deal with the first amendment on a justification on the sum total. That is not what the first amendment involves. The first amendment involves freedom of expression to disagree with what goes on in this country or in this world. When you deal with security, I agree with you totally. But what is the relationship between displaying a placard and the security of the embassy?

Mr. QUINN. Well, the question itself, if you are referring to the content neutrality or whether or not there is a placard or a demonstrator, the section of the statute is clear that it gives us the opportunity to provide for the demonstrators so that they can have this opportunity to have the free expression.

Senator SPECTER. Well, you are missing my point, and I am not on content neutrality. I am on the point that security is critical, and security is the point that everybody has referred to, and I agree with that; Congressman Fauntroy agrees with that. But what relationship is there between displaying a placard 499 feet from the embassy and the security of the embassy? Isn't it just overly broad? Doesn't it really have no reasonable relationship to security within the embassy?

Mr. QUINN. Well, I think that it does have a relationship, in that if you have demonstrators there, it does present, particularly if they are "anti" demonstrators, it does present a security risk that we have to take into consideration, that we have to address for any host government or any foreign government involved.

Senator SPECTER. Well, in our society, Mr. Quinn, it seems to me we do not take into consideration risks until there is action. We do not recognize the possibility or the chance that somebody is going to pose some risk. Under our system of laws, we respond when somebody acts in an illegal way; and somebody acts in an illegal way when they threaten somebody. And I have been in law enforcement for a long time and am very concerned about forceful actions or illegal action.

But I am trying to understand, to the extent I can, your thinking as to how the display of a placard has anything to do with the security problem.

Mr. QUINN. Senator, all I am saying is that we enforce section 22-1115 as it is written, and that we support the need for the buffer zone.

Senator SPECTER. Mr. Fauntroy, go ahead.

Mr. FAUNTROY. Mr. Quinn, Mr. Lamb, and Mr. Keeney, I would want to explain to you why I was so happy that Senator Specter called these hearings, because I have had experience on both sides of this issue. I have been a public official for more than 15 years and have been the subject of demonstrations. And on the other hand, I have organized a number of first amendment petitions. I was coordinator of the march on Washington in 1963. Last year, or in 1983, we organized a group of about 500,000 citizens who arrived here for demonstrations on the 20th anniversary of that march. I have been a participant in a number of demonstrations around the country where the 100-foot rule has been applied.

And quite frankly, I was shocked when I was told that we had to stay 500 feet away from the South African Embassy. I said, no, it is 100 feet away; I know that is the case, because every demonstration I have participated in over these years has had that 100-foot limitation. And when I was told by my police officers, the police officers of the District of Columbia, that that was the case, I assumed it to be true, and I have been wondering every since, what is it that can be protected more effectively from 500 feet than from the 100 feet which, as I now understand it, is the limitation on consulates, for example, around the country. And quite frankly, I have not heard an answer yet, and I just want you to understand why we persist in raising the question.

Senator SPECTER. I would supplement what Congressman Fauntroy said to this extent, gentlemen. My concerns go beyond what Mr. Fauntroy says. I first got into this problem about making arrests at Independence Hall in Philadelphia on July 4, 1966, as to whom you could arrest and under what circumstances, when I was district attorney there. It has been a very difficult issue. We faced tremendous problems on riots and expression in 1966, 1967, and 1968, and it is a very vexing constitutional issue. And we are coming to the issue as to what it costs the District of Columbia, which is the most direct interest of this subcommittee, and a concern I have as to constitutional rights, a concern I have as to costs, and I do have a concern as to embassy security. It is something we have to have a lot better protection for the United States. We are being blown up around the world by host governments who not only have no concern for our security, but participate in the attacks, from all the indications.

But let us turn now to the District officials, if we may?

Mr. KEENEY. Senator, you asked me a specific question on a particular case, and my colleague has handed it to me, with respect to content neutrality.

Senator SPECTER. Sure.

Mr. KEENEY. There is a May 1984 District court decision in which they consider the content neutrality argument was made, denial of equal protection, and the court rejected it out-of-hand. They just said this argument is without merit.

I would like to offer that for the record, if I may.

Senator SPECTER. I would like to see that. We are going to have to spank Lexus in our office for not giving us all these content neutrality sections.

DISTRICT OF COLUMBIA

STATEMENT OF THOMAS DOWNS, CITY ADMINISTRATOR/DEPUTY MAYOR FOR OPERATIONS

ACCOMPANIED BY:

MAURICE TURNER, CHIEF OF POLICE, METROPOLITAN POLICE DEPARTMENT

JOHN C. CONNOR, DEPUTY CHIEF AND DIRECTOR, SPECIAL OPERATIONS DIVISION, METROPOLITAN POLICE DEPARTMENT

Senator SPECTER. Let us turn to you, Mr. Downs, or Chief Turner, whichever you gentlemen prefer, and I would like to move to the question as to what does it cost the District of Columbia to provide the kind of police protection to keep people 500 feet away from displaying signs and placards.

Mr. DOWNS. Senator, if I might, could I just briefly make two quick points before the chief answers that question. One is that our concern is not the delicate constitutional balance that you have raised between the right of free speech and the need to protect. We think that that is an issue that has to be resolved both through the court system and, as has been pointed out, it has been addressed several times. Nor is ours a concern about the international ramifications of the distance in the rule itself. We have been told several times by the national Government and the Congress that international concerns about management, security, safety, and zoning of the embassies of foreign governments is a national issue. We have tried to respect that.

RESPONSIBILITY OF DISTRICT GOVERNMENT

Our responsibility in the District of Columbia is the concern for public safety, control of crowds, control of violence, and protection of foreign property as a responsibility that this government has to the national Government.

We want to address this issue in terms of public safety and not the other issues, as I said, and the uniqueness of the District of Columbia as an enclave of foreign embassies. The issue of sliding the 500-foot distance to 400, 300, or 200 feet; while it has a number of concerns at the upper level in the international community about the signals it sends, our concern about decreasing distances for minimum standards for the right of assembly is primarily a public safety issue. We would hope that the opinions of the tactical officers responsible for the defense of the embassies themselves would be strongly considered in that light.

There is a question raised as to whether or not we were giving special preference to the prisoners as they were arrested at the embassy. As Delegate Fauntroy pointed out, we want to assure you that they were treated the same as any other prisoners. This government, I think it is safe to say, more than empathizes with the goals of protesters. We do not assume that the protesters are violent criminals, but they are treated the same way, under the same standard arrest procedures as any other prisoners.

As to whether or not this protection of the embassy is an untoward burden on the D.C. government, it is a responsibility that we have accepted for 15 to 20 years, both in the protection and backup for the National Capital and for the White House. We provide through our Special Operations Division targeted security for all national interests within the District of Columbia, and the embassies are no exception. We do not consider the enforcement of this law at this time a burden.

Given that, I would then suggest that Chief Turner answer your direct question.

NO CHANGE PLANNED IN 500-FOOT RULE

Senator SPECTER. Well, before you turn to Chief Turner, Mr. Downs, we are dealing here with a D.C. ordinance. We are not dealing with a Federal statute. This is a D.C. ordinance on the 500 feet and all these provisions about prohibiting the display of placards.

Mr. DOWNS. I was going to mention that as a matter of home rule, we would hope that the Congress would respect that. We have inherited that statute from the Congress of 1937 as an act. It is now codified in our own D.C. Code. We do not plan at the present time to make modifications in it. We have been told by the State Department that that would send messages around the world that would be untoward. Our police department does not think that it is appropriate to reduce that distance at this time.

We do not plan, as far as I can tell, to change that distance at the present time. We do understand the ability of the Congress at any time to pass an overriding piece of legislation which would, in effect, change that.

Senator SPECTER. Well, we respect the ordinance as a matter of home rule. We may not respect it as a matter of content.

CITIZENS ENTITLED TO IMMEDIATE ARRAIGNMENT

Since you brought up the subject of Mr. Fauntroy being treated like every other citizen, which is fine, why aren't any citizens entitled to having an immediate arraignment after they are processed without spending overnight in jail if they are arrested after lunchtime, or 2 days in jail if they are arrested on Saturday?

Mr. DOWNS. Senator, that question involves a number of responses, both from the U.S. Attorney's Office and the court system. I would be pleased to try and respond more fully in writing——

Senator SPECTER. I do not think it involves the U.S. Attorney's Office at all. What it involves is having a judicial official on duty who can provide an arraignment and issue a bail order, or let people sign their own recognizance, and leave the premises.

Mr. DOWNS. Senator, I did not come prepared to discuss it. I would be glad to try and provide something in writing.

Senator SPECTER. I wish you would, because it seems to me that it would be cheaper for the District of Columbia to have a judicial official on hand as opposed to keeping people in custody, and it would certainly be important in terms of the least possible restraint to have bail set at an early time and to have an arraignment.

Mr. DOWNS. Senator, as you know, this is the subject of several court cases and is in addition an area where the judiciary itself has to define its position. While a judge has said that it is appropriate to have arraignment within a certain period of time, that means that the judiciary as well has to respond with the necessary allocation and the creation of court hours

I would be glad, though, to bring the issue back to you in a fuller format.

Senator SPECTER. Please do.

COST OF ENFORCING 500-FOOT RULE

Chief, what does it cost the District of Columbia Police Department to keep people 500 feet away from embassies when they want to display signs?

Chief TURNER. Approximately $600 per demonstration when there are no arrests, Mr. Chairman. We have 16 officers that are assigned to that location for a 2- to 3-hour period. We figure that average salaries of all the officers combined are around $14 per hour, and so for those 2 to 3 hours, somewhere between $600 and $700. I will furnish for the record——

Senator SPECTER. Do they appear there, chief, only by appointment? How do you limit them to 2 hours a day?

Chief TURNER. Members who are assigned to that site are from the Special Operations Division, who have been trained and have expertise in crowd control and crowd management. Normally, they would be on some type of anticrime patrol. However, their assignments when there are demonstrations are for crowd control and crowd management.

Senator SPECTER. Well, why are they there for only 2 hours a day?

Chief TURNER. The demonstrations are between 3:30 p.m. and 6 p.m., at which time they are normally concluded, and there is no need to keep officers there.

Senator SPECTER. From 3:30 to 6—this is all done by appointment?

Chief TURNER. It is done by Mr. Fauntroy setting up the time of the demonstration, and I cannot answer why he has chosen those times.

Senator SPECTER. Mr. Quinn, how can we protect the embassy from dangerous, placard-carrying demonstrators if they are only going to be there from 3:30 to 6? Somebody can threaten the embassy at 3:15 or 6:15.

Mr. QUINN. Senator, the Uniformed Division of the Secret Service has a fixed post at that location on a 24-hour-a-day basis, presently. I think what Chief Turner is referring to is that the demonstrators themselves are only there during that period of time, and that is the time that it is necessary for the Metropolitan Police Department to be there.

Senator SPECTER. If demonstrators are nice enough to make appointments, can't we conclude they will be nice enough not to hurt anybody?

Chief TURNER. Well, that is certainly a reasonable expectation, Mr. Chairman. Certainly, all of the demonstrations at the South African Embassy have been nonviolent. We normally interact with the persons who are in control of those demonstrations.

One thing that I would like to add is that they want arrests to highlight the plight of what they are doing, so we have to accommodate them. We sit down and negotiate. We do this with all demonstrations.

CAUSE FOR ARREST

Senator SPECTER. Now, wait a minute, chief. Do you have to accommodate somebody who wants to be arrested? Aren't people arrested when they give cause for arrest?

Chief TURNER. Well, these people give cause for arrest. They violate the law; they violate the present statute and they are arrested.

Senator SPECTER. Is it true that some of the people who demonstrate have to be instructed on how to violate the law?

Chief TURNER. I would not go so far as to say that. They are told what the law requires. They know in front what the violations of the law are. They have, I guess, people who are legal advisors, telling them what is violated. I think the system, currently, is working very smoothly.

Senator SPECTER. There is an inquiry by the Philadelphia Bar Association into the competency of one of the prominent members of the Bar who appeared to demonstrate and did not know how to become arrested. Is that a false report?

Chief TURNER. I cannot answer that, Senator. I am not familiar with that particular case.

Senator SPECTER. So, what you are saying is that—well, let me back up for just a minute. Is it true that there is a 2-week waiting period to get arrested?

Chief TURNER. I have no idea who is going to be arrested and when they are going to be arrested. I am sure that the organizers of the demonstrations know in advance who will be arrested and when they will be arrested.

Senator SPECTER. Well, Chief, doesn't it really boil down to a situation where there is really no security problem to the South African Embassy?

Chief TURNER. We are dealing with "what ifs." You know, when we plan for a demonstration, we never know what is going to transpire, so we are prepared for the worst case scenario. Something that is peaceful can become very violent in a short period of time.

Senator SPECTER. Well, chief, how can you say you are prepared for the worst case scenario, when you do not appear on the scene until 3:30 in the afternoon?

Chief TURNER. Because we have entered into an agreement that demonstrators are going to arrive at that time, they are going to demonstrate at that time, and we sit down and talk with them, and that is when they arrive.

This is no different from other demonstrations, such as the antinukes, and the yippies, that we have had. This city is the seat of the Federal Government. We sit down with the people who are arrested here on Capitol Hill. We go over the ground rules. They know how many people they want to be arrested to highlight the plight of their grievances.

NUMBER OF PEOPLE ARRESTED

Senator SPECTER. How many people have been arrested in this demonstration?

Chief TURNER. 108, I believe.

Senator SPECTER. And what does it cost to process those 108 people?

Chief TURNER. I will have to furnish that for the record. I do not have that off-the-top-of-my-head.

Senator SPECTER. And what is the overhead cost on the 15 policeman who are there for 2 hours a day; what does it cost to transfer them back and forth, and their supervisors, et cetera?

Chief TURNER. The administrative cost was included in the $600 to $700 that I mentioned to you previously.

Senator SPECTER. And how many other similar kinds of demonstrations are worked out by appointment only—the yippies and who else?

Chief TURNER. The yippies, the antinukes, and most of the organized demonstrations that we have had, such as the nuns that demonstrated here on Capitol Hill. They indicated where they were going to demonstrate when they applied for parade permits. They indicated that they wanted the arrests to highlight the plight of their grievances.

PARADE AND DEMONSTRATION PERMITS ISSUED

In most demonstrations that occur in this town involving the Capitol Police, the Park Police, and the Metropolitan Police, parade permits and demonstration permits are issued by all three law enforcement agencies.

Senator SPECTER. Well, you are authorized to issue parade permits. But that is to allow people to parade.

Chief TURNER. That is correct.

Senator SPECTER. And when you have a parade permit, and people parade in accordance with the permit, they are not arrested.

Chief TURNER. No, sir, they are not.

Senator SPECTER. So that is a legitimate exercise of governmental expenditures. To the extent that these permits are constitutional at all, which I am not getting into now, but to the extent that they are, that is an established procedure to have a law-abiding incident.

Chief TURNER. Yes; but more often than not, at the conclusion of their parade permit, if it ends up at Lafayette Park, or at Capitol Hill, if it ends up at the Justice Department, they want arrests to highlight the plight, again, in most cases.

Senator SPECTER. So they apply for a permit to have a lawful parade, which protects them from not having an arrest during the part of their lawful parade.

Chief TURNER. Yes, sir.

Senator SPECTER. And then, they want to have some event at the end of that proceeding, where they get themselves arrested.

Chief TURNER. That is correct.

COST OF STAGED ARRESTS

Senator SPECTER. Well, chief, this subcommittee would like to know just what we are paying for these staged arrests. I would like to know for the year 1984 how many of these staged arrests there have been and what it has cost the District of Columbia.

Chief TURNER. I will furnish that information. If I may, the people who are antiabortion, they wanted the arrests to highlight their plight, and they ended up in front of the White House, where they lay down in the prone position on Pennsylvania Avenue. They wanted arrests. Sometimes, they want 10 arrests, sometimes they may want 100 arrests.

ORGANIZED ARRESTS BY AGREEMENT

Senator SPECTER. Well, Chief Turner, do you consider it a legitimate police function to cooperate with people who want to be arrested for publicity purposes?

Chief TURNER. I certainly do, sir. I think this city is involved in more demonstrations than any law enforcement agency in this country. There is not a day that passes that somebody does not have a grievance against the Federal Government. It is the responsibility of the D.C. government to provide public safety and protection, and I think if we do not talk and interact with these people, sometimes it can become very chaotic. I think that because of the current worked out conditions that are utilized by most law enforcement agencies, we have had very few confrontations as a result.

Senator SPECTER. So your point is that it is more efficient to have organized arrests by agreement than it is to face a problem if you do not have organized arrests?

Chief TURNER. That is correct.

Senator SPECTER. Well, do you think there would be these demonstrations by the yippies if they could not get themselves arrested?

Chief TURNER. I am sure there would be, they are going to violate the law.

Senator SPECTER. Well, why are you sure about that?

Chief TURNER. I guess it is prolog. It happens all the time. People have grievances. They figure that in this way their grievances are heard. It is brought to the attention of the media when they are arrested.

Senator SPECTER. And if the media did not cover these staged arrests, then would they want to be arrested?

Chief TURNER. Not in my opinion, I would not think they would want to be arrested.

Senator SPECTER. Well, if these staged arrests did not occur, then the media would not have anything to cover.

Chief TURNER. Yes; but they are going to protest anyway. I think it is better for us within the police department, to know, at the beginning of whatever they are demonstrative for, that there are going to be arrests, and that we are adequately prepared to handle them.

Senator SPECTER. Chief, it seems to me you have enough arrests to make which are not staged.

Chief TURNER. That is very correct, Mr. Chairman. This department made 43,000 arrests last year. Most of those arrests were for violent crimes, part II offenses, and drug offenses. So this department is involved almost on a daily basis of in excess of 200 arrests.

Senator SPECTER. So you have plenty of arrests to make without having staged arrests.

Chief Turner. Yes; we do.

Senator SPECTER. Well, I would like you to provide for the subcommittee for the year 1984 the categories of staged arrests, the incidents that there were, and what it cost the District of Columbia.

Chief TURNER. I would say protest arrests, and I will furnish that information for you.

Senator SPECTER. All right.

[The information follows:]

PROTEST DEMONSTRATIONS DURING FISCAL YEAR 1984

Name of demonstration and date	Regular pay		Overtime pay	
	Hours	Cost	Hours	Cost
Islamic Mosque, every Friday	1,200	$15,807		
United States out of Grenada, Oct. 1983	1,022	$13.459	143	$2.824
Chinese Student Association, 11/10/83	280	$3.687	39	$770
Chinese Student Association, 11/11/83	824	$10,852	115	$2.271
Coalition Anti-War, 11/12/83	350	$4,609	49	$968
Islamic Unity, 3/21/84	90	$1,185	13	$256
Afghan demonstration, 4/27/84	280	$3.687	39	$770
Sojourners Anti-Nuke, 6/11/84	216	$2.844	30	$593
Ukranian demonstrations, 9/16/84	78	$1,027	11	$217
Total	4,340	$57,157	439	$8.670
Combined total				$65.827

Additionally, from November 12, 1984 through December 13, 1984, there were 22 separate demonstrations at the South African Embassy. Seven of these demonstrations involved no arrests and 64 persons were arrested during the remaining 15 demonstrations. Each of these demonstrations required an average of 16 officers at 5 hours per officer or an average of 80 man-hours per demonstration for each of the 22 demonstrations for a total of $23,179 for personnel cost on the scene. Transporting and processing each prisoner averaged approximately 2 hours for a total of 128 hours at the average officer's salary of $13.17 per hour for an additional $1,686. The total cost of these demonstrations was $24,865 or $389 per arrest.

QUESTIONING POLICE DEPARTMENT INVOLVEMENT IN STAGED ARRESTS

Senator SPECTER. Deputy Chief Connor, we have not heard from you. What would you care to add, sir?

Mr. CONNOR. Well, I think the chief and the other panel members have covered everything. I would certainly be glad to answer any questions, or try to answer any questions that you might have.

Senator SPECTER. Well, one question I have that I will not ask is whether you disagree with the chief that it is a matter of sound public policy to participate on behalf of the police department in these staged arrests.

Chief TURNER. Deputy Chief Connor is the one who does the negotiating since he is in charge of the special operations division.

Mr. CONNOR. Let me say this. I think it is not being characterized seriously enough. You have portrayed it as a kind of amusement, and it is really not.

If we have a group of demonstrators who come to this city with a serious issue at hand, we meet with them when they apply for a permit, or whenever we learn that there is going to be a demonstration. We do everything in our power to meet with them, with their legal representatives and our legal representatives. We try to discuss with them exactly what they want to accomplish here, where and when they want to accomplish it, what the limitations of the local statutes are, and if there are going to be arrests, we want to know if they intend to have arrests made, and what laws they intend to violate, so that everybody understands exactly what the others' positions are, and we do not have any breakdowns, confrontations, or disorderly mobs running through the streets. This way, we are in a better position to maintain public order and limit the destruction to properties or injuries to people. They still have a right and they still have the opportunity to exercise their freedom to petition the Government here.

Senator SPECTER. Well. Chief Connor, I am not at all sure you are right about that. I am not at all sure that you are promoting public safety by participating in arrangements to have staged arrests. I have been in the business of arrests. I have been in the business of arresting people for a long time myself. I was district attorney of Philadelphia for some 8 years and have seen law enforcement problems in great detail. But what we have here is a statute which prohibits displaying a banner 500 feet away. We are talking about security interests at an embassy, which is very important. We have a statute which is not reasonably related, in my judgment, or remotely related to that kind of an objective. And then we have, by appointment, the police department appearing to cooperate with people who want to be arrested for publicity purposes. And the Federal Government is spending a lot of money that this subcommittee is authorizing, and we have a lot of purposes we want to spend it on—for drug control and prison reform and literacy at the prisons—and there is a real question in my mind as to whether the activities of the police department are creating more arrests or creating fewer arrests. Your job is to have as few arrests as you can, and you are sitting there, telling me that this is a better way to have fewer arrests—and frankly, I doubt it.

Mr. DOWNS. Senator, as I said earlier, I hope that the subcommittee and you would respect the tactical judgments of the officers who have to spend all day long on the streets. In this particular case, I think the reaction that Chief Connor is having is one of reaction to almost 20 years of experience on the street, dealing with a variety of situations in the District of Columbia, dating back to the midsixties. Both chiefs are respected nationally for their ability to enforce the law evenhandedly. We have, I think, the finest professional municipal police department in the country. We are recognized for our ability, both at the national level and locally, for our ability to contain and manage potentially violent situations, and we have successfully done that for the last decade.

Those are matters of judgment. The chief is the individual who has to make the arrests on the street. We think that decisions that are made about meeting with and negotiating with demonstrators is far preferable to being surprised on the street by individuals who are more than willing to be arrested, to protest. That means that they have to pick on their own which laws they will break to be arrested.

We are much more comfortable knowing in advance the intention of protesters and being prepared for it than we are being unprepared. We hope that the policy will be recognized as one that is in the interest of the overall public safety.

Senator SPECTER. Mr. Downs, I agree totally with the approach of meeting with the protesters and having discussions with protesters to see what it is they are about. And I am not passing final judgment on it. This is an approach which I think merits some examination, and I am not about to come to a contrary conclusion, sitting here—it is already this afternoon. But I have very substantial questions about it. The object is to minimize arrests, not to have people who are arrested. And it may well be that the policies, however long they have been carried out, encourage arrests rather than discourage arrests. And where you have a statute which is involved, which is not reasonably related to law enforcement purposes, that throws another big question mark into the entire proceeding.

I am well aware of the fact that Washington, DC, is a unique place. This subcommittee appropriates a great deal of money for a great many unique features, and this subcommittee has been very supportive of the city and law enforcement here—very, very supportive. But I have expressed my concerns.

RESPECTING RIGHT TO BE ARRESTED

Mr. FAUNTROY. Senator, if you would yield, I would like to emphasize the unique nature of the District of Columbia in that regard. We have complained as citizens here that too much of the time and energy and resources of our community are committed to carrying out and protecting the Federal interest in the number of embassies here. I recall a few years ago when a large number of coalminers came with rather impressive demonstrations, which cost us into the millions of dollars, as a matter of fact. And you were not chairman of the subcommittee at that time, but I wish you had been, because I know you would have assured our District taxpayers that they would not have had to bear half the burden of that national responsibility.

But with respect to the arrests, I would hope that most criminals would arrange and stage their arrests, but they are not cooperative, as you know. But the genius of our first amendment, I think, is that citizens recognize they have that right of peaceful petition, and they have the right for the purpose of calling public attention to the issues which they raise of being arrested. And I am quite confident that if the 100-foot limitation, which I think is reasonable around the country, were in effect here, that I would step 99 feet within if, after bringing 500,000 people here last year and urging the Congress to pass the Gray amendment and having contacted hundreds of thousands of people over the years to petition their Members of Congress to pass this legislation and they had failed, I might call upon the founding fathers and thank them for having provided us the first amendment peaceful assembly provision and step within 100 feet of the line to be arrested, and I would hope that we would have respectful officers who would respect my right to be arrested and respect my right to be arraigned in a timely fashion, and make my moral witness for the purpose of raising the consciousness level of the people of the country and appealing to the conscience on an issue.

So that I am not so much distressed by the fact that our police force here has to assume responsibility for what is obviously a unique situation in our Nation's Capital. I suspect, on other matters, I might be more forceful in suggesting that the Federal Government ought to pick up more of the cost of arranging to respect first amendment rights by arresting citizens who have violated the law after having been informed that in order to get arrested, you have to do the following.

DROPPING CHARGES ON STAGED ARRESTS

Senator SPECTER. Deputy Chief Connor, on these arrests by arrangement, are the charges customarily dropped?

Mr. CONNOR. No, sir. That is not my decision to make, but——

Senator SPECTER. I did not ask you if it was your decision. My question is, are the charges customarily dropped.

Mr. CONNOR. Not usually, no.

Senator SPECTER. Sometimes?

Mr. CONNOR. Occasionally, yes.

Senator SPECTER. Well, what are the standards?

Mr. CONNOR. I do not make those standards, Senator.

Senator SPECTER. I know you do not. The U.S. attorney makes that decision. I understand that. But are these people willing to face arrest, even by arrangement, if they face a realistic risk of going to jail for the violations?

Mr. CONNOR. Yes, Senator.

Senator SPECTER. And do they, in fact, spend time in jail?

Mr. CONNOR. Most of the charges are misdemeanor charges in these demonstrations——

Senator SPECTER. Well, some misdemeanors call for jail time.

Mr. CONNOR. Some do. Most of them receive a fine or suspended sentence.

Senator SPECTER. Well, a suspended sentence is nothing. A fine may be something, depending on what it is.

Well, Chief Turner, I would like to know what the dispositions of these cases are. I would like to know what it is we are paying for, what happens.

Chief TURNER. Again, Mr. Chairman, we will furnish that for the record.

Senator SPECTER. OK. We would be very interested to see it.

[CLERK'S NOTE.—The information requested was not available prior to the printing of these hearings.]

EMBASSY SECURITY

Senator SPECTER. Does anybody have anything to add?

Mr. LAMB. Mr. Chairman, may I add one thing quickly, on this question of the placards?

Senator Specter Yes.

Mr. LAMB. The discussion so far on the security of the embassies has been in fairly dramatic terms, talking about violence, and so on. But in fact, our concerns are broader than that. Some of those countries in which we are located are really police states. While in the United States, a demonstration with placards in front of the United States might be entirely peaceful and civil, it could be a pretext in some foreign country for a bunch of thugs in front of our embassy which might be designed to intimidate or harass people who want access to the embassy.

Senator SPECTER. Have you ever found any situation where somebody used a placard as a deceptive device for a bunch of thugs?

Mr. LAMB. I could see some of the Communist countries using a demonstration in front of their embassy as the pretext for stationing thugs in front of our embassy; yes.

Senator SPECTER. How about my question?

Mr. LAMB. I am sorry, Senator.

Senator SPECTER. My question was have you ever seen somebody use a placard as a device employed by a bunch of thugs for subterfuge?

Mr. LAMB. Well, sir, I know of instances where placards have been used in demonstrations that have turned violent, and used as weapons—is that your question?

Senator SPECTER. Well, I understand that placards could be weapons. But my question is have you seen—are we talking about a reality here? Are we talking about a group of citizens who are carrying placards to express and convey an idea, or is it really realistic that a bunch of thugs are posing as peaceful demonstrators?

Mr. Downs. Senator, I think during the early Iranian demonstrations, we had a particular violent confrontation——

Senator Specter. Well, let me get an answer from Mr. Lamb, and then we will go back to you.

Mr. Lamb. Senator, I think our concern is not in the United States. I really think that most of the demonstrations in the United States are by law-abiding citizens who want to make a political point. But some of these countries will take the fact that we have had a demonstration in front of their embassy and actually translate it into an organized effort in their country that is designed to intimidate or harass.

Senator Specter. Well, do those countries have laws that prohibit carrying placards 500 feet from the U.S. Embassy?

Mr. Lamb. Well, we are talking about the kinds of countries that are police states, where the people are pretty much subject to doing whatever the government wants them to do, in political terms.

Senator Specter. So we are talking about contrivances which are really undertaken by the government.

Mr. Lamb. Yes, sir.

Senator Specter. Well, I understand that, Mr. Lamb, and I am very sympathetic to that, and I think we have to have better security for our embassies; I think that is definitely true. But that does not really answer the question as to whether there is some reasonable relationship with what we are doing with 22-1116 in the United States. That is what this hearing is about.

Chief, did you have something to add?

Chief Turner. I was just going to add, Mr. Chairman, that during some of the violent Iranian demonstrations, placards were put on 2 by 4's, with the intent to do physical harm to each other and to law enforcement officers, at some of the embassies here in town, and we had to protect those individuals along those lines. So there were some very violent confrontations that we experienced, and a large number of arrests, in those particular instances.

Senator Specter. Well. Chief, I can certainly see that, and I think you have to be prepared to deal with that in a very strong law enforcement way. That just does not really relate to these prearrangements where you know that that is not the issue and not the problem.

Chief Turner. That is correct, Senator.

SUBCOMMITTEE RECESS

Senator Specter. Thank you very much, gentlemen. The subcommittee will stand in recess.

[Whereupon, at 12:15 p.m., Tuesday, January 8, the subcommittee was recessed, to reconvene at the call of the Chair.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, JANUARY 23, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:06 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senator Specter.

DISTRICT OF COLUMBIA

SUPERIOR COURT

STATEMENT OF HON. GLADYS KESSLER, PRESIDING JUDGE, D.C. SUPERIOR COURT'S FAMILY DIVISION

OPENING STATEMENT

Senator SPECTER. We will convene this hearing of the District of Columbia Subcommittee of the Appropriations Committee on the subject of the homeless.

Two years ago tomorrow, this subcommittee convened a hearing on this subject, in the face of what we had seen as a growing problem, not only in Washington, DC, but a national problem, having seen many homeless on the streets of Pennsylvania, as I travel through the cities of my home State—Philadelphia, Pittsburgh, Harrisburg, Erie—and also seeing the burgeoning problem of the homeless in the District of Columbia, and that hearing was convened immediately upon the time that I became chairman of this subcommittee.

At that time, the estimate was made by the District government that there were some 2,000 homeless in Washington, DC, and other estimates placed the homeless population in the 5,000 to 10,000 range. And some testimony suggested at that time that it was not a matter appropriate for the Federal Government.

In the intervening 2 years, we have seen the homeless issue become a major problem in the country. Senator Pryor of Arkansas and I have introduced legislation which has added significant additional funding at the Federal level. There has been the opening of a shelter in the District at 2nd and D Streets NW. by the Federal Government, and there is a major issue as to what will be an appropriate governmental response to the problem of the homeless in this city and across the Nation, which is a very obvious problem at a time when the weather is so cold, and people are freezing outside, and at a time when we are talking about a different kind of a "freeze" in Federal or other governmental expenditures.

Part of the problem, part of the issue, has been the standards for release of people from mental institutions, and there has been a very significant shift in the law on that subject, prompting some to raise the question as to whether there ought to be a different standard for release from institutions, or perhaps different care in noninstitutional settings so that people do not move out onto the streets of our cities like Washington, DC. There have been studies by the psychiatric institutes on that subject, and some of those issues we will take up at our hearing this morning.

INTRODUCTION OF PANEL I

For organizational purposes, we have divided the six witnesses whom we will hear from today into two panels. We have had a request from Rev. John Steinbruck, First Lutheran Church Services, and chairman of the D.C. Commission on the Homeless, to move up to panel I because of his other commitments, and we will be glad to oblige Reverend Steinbruck.

So, at this time, I would like to call Reverend Steinbruck, together with the Honorable Gladys Kessler, Presiding Judge of the D.C. Superior Court, Family Division; David Rivers, Director of the D.C. Department of Human Services; and Dr. William Prescott, Superintendent of St. Elizabeths Hospital, to step forward at this time, if you would.

We appreciate your joining us this morning. Let us begin with you, Judge Kessler, if we may.

We would like to limit the opening statements to 5 minutes. To the extent that statements have been submitted in advance, they will be made a part of the record in full, but we would like to keep it within the 5-minute opening statement timeframe so we can have the maximum amount of time for questions, answers, and dialog.

Judge Kessler, welcome again. It is nice to have you here.

STATEMENT OF JUDGE KESSLER

Judge KESSLER. Good morning, Senator. It is a pleasure to be here.

I did not prepare an opening statement. It was my understanding that you wanted just a very brief outline of the procedures by which homeless people could get into the mental health system of the District of Columbia.

Senator SPECTER. That is fine.

CIVIL COMMITMENT PROCEDURE

Judge KESSLER. OK. They can come in two different ways. Primarily, they would come in through civil commitment procedure, and I think that is what everybody focuses on. I want to remind everyone that they may also come in through the criminal system, but I will deal with that last.

If they come in through the civil commitment process, I will give you a typical scenario. I think that may be easier. A police officer may see someone who is engaging in certain conduct that that police officer thinks is unusual or abnormal. The police officer will sign and make out an affidavit, stating the reasons why that officer thinks that the person is both mentally ill and is a danger to himself or to others. That police officer will take the person either to St. Elizabeths or to one of the community mental health centers. The person will be examined by a psychiatrist. That psychiatrist will also fill out some emergency papers. That person may be detained against his will at St. Elizabeths for 48 hours. Within 48 hours, however, St. Elizabeths must file with the court a petition for emergency hospitalization. Within the next 24 hours, a judge must read the papers that have been signed by the police officer and by the admitting psychiatrist at St. Elizabeths. That judge must then decide on the basis of just the "cold" papers whether there is probable cause to believe that the statutory standard is being met. Then, if the judge decides there is probable cause, the judge will sign an order for 7-day hospitalization. At any time thereafter, the patient through his lawyer—and counsel is appointed immediately for the patient—may request an open court probable cause hearing, and then everybody comes down to court, and there is testimony.

Once the patient requests a probable-cause hearing, that hearing must be held within 24 hours. So, as you can see, the court operates under very tight guidelines, and very tight hourly guidelines.

Once a judge decides that there is probable cause based upon testimony, then that person can be detained until there is a trial, if the person wishes, before a jury or before a judge, and then the ordinary, long-term civil commitment procedures go into effect. In terms of the emergency commitment, that is the scenario. You go to a police officer; to St. Elizabeths; there must be an affidavit of both the police officer and the admitting psychiatrist; they can be detained 48 hours, and it comes before a judge within 24 hours after the 48-hour detention. Now, that is the civil side.

COMMITMENT THROUGH CRIMINAL SYSTEM

Very quickly, on the criminal side, it is certainly possible for homeless people to come into the system through minor charges such as destruction of property, or simple assault—petit larceny, for example. That person would come into our arraignment court. The attorney or the judge, or anybody in contact with that person, might have reason to doubt whether that person was competent to go through the criminal court system. The judge, upon request, would ask for an emergency screening, which would be done within 24 hours. If that emergency screening by a forensic psychiatrist—in other words, one of Director Rivers' psychiatrists—if that screening recommended inpatient hospitalization and evaluation, then that person would be examined at St.

Elizabeths. The period of time is 45 days for a competency report. In 45 days, the person would be brought back to court, and the doctors at St. Elizabeths would make their recommendations to the judge as to whether that person was competent to stand trial. If the recommendation was that the person was not competent, they would probably be sent back to St. Elizabeths for further study, for 60 days. They would be brought back to court. If the recommendation still was that that person was not competent to have a criminal trial, the judge would probably give the U.S. Attorney's Office 30 days in which to file their civil commitment papers.

So those are the two ways or the two streets by which a homeless person would come into our system.

Senator SPECTER. Thank you very much, Judge Kessler.

That sets the parameter for the legal procedures, and we are going to be taking up the standards as we move into the substantive testimony.

I would like now to hear from Director David Rivers, of the District of Columbia Department of Human Services.

Welcome, Director Rivers.

DEPARTMENT OF HUMAN SERVICES

STATEMENT OF DAVID E. RIVERS, DIRECTOR, D.C. DEPARTMENT OF HUMAN SERVICES

Mr. RIVERS. Thank you very much, Mr. Chairman.

It is a privilege to appear today before the committee to discuss the issue of aiding homeless persons who are mentally ill. This is a complex and critical problem, and it is worsening.

The ranks of the homeless, who are found across the country in cities of all sizes, are growing. A significant number have mental ailments.

It is clear that this is a problem that spans the Nation, and one that cannot be adequately addressed on a scattered basis with only local resources. This is a national problem, stemming in part from Federal actions, that calls for an appropriate Federal response through increased assistance, and continued help from traditional private agencies and churches as well.

There are no firm figures to measure the Nation's homeless population, and estimates vary. A local activist group, the Community for Creative Nonviolence, cites a figure of 2 million. The Department of Housing and Urban Development, on the other hand, sets the number between 250,000 and 350,000, with a maximum of 580,000 at any one time.

What is clear is that the problem is nationwide and exists in every region of the country, with most of the homeless concentrated in metropolitan areas of 250,000 or more.

GENERAL CATEGORIES OF HOMELESS

Studies indicate that the homeless fall within three general categories: Those with chronic disabilities, those with personal crisis, and those affected by economic conditions.

Contributing factors behind the national homeless statistics include: Policy changes in the Federal Disability Benefit Program requiring stringent case reviews and termination of benefits while appeals are pending; effects of past inflation rates on public assistance benefits levels, which have reduced real buying power; Federal cutbacks in eligibility for public assistance benefits; deinstitutionalization policies in State mental health systems which require that hospitals not admit patients who do not need full hospital care, and that officials find community care alternatives for those who can more effectively be treated in other settings; high unemployment, a decline in low-skilled jobs, and an increase in transients seeking work but unable to find it; and, the loss of low-income housing units due to abandonment, decay, renovations, and Government cutbacks.

In the District of Columbia, there are the same long-term factors matched with the immediate problems of those seeking shelters: Physical and mental illness, drug abuse and alcoholism, family disputes, breakups, and evictions.

As is true nationally, we have no hard figures on the number of homeless here. Estimates range from 2,000 to 15,000. We also lack data on what percentage of these individuals have mental ailments. However, our experience indicates that above one-half of those who seek shelter at facilities supported by the Department of Human Services would benefit from mental health services. Some have been patients at St. Elizabeths Hospital before.

The department is currently providing shelter for the homeless through contracts at eight facilities—four for families, two for men, one for women, and one for abused women and their children. At these eight homes, we are currently offering shelter for up to 95 families, 400 men, 65 women, plus 21 beds at the home for battered women and their children. In addition, when these facilities are full, homeless persons are placed on a spot basis at other shelters in the Washington area.

COST OF EMERGENCY SHELTER PROGRAM

During the current fiscal year, the District expects to provide a total of 265,100 nights of shelter. The estimated cost is $3,871,000—$3,600,000 million in appropriated money, and $271,000 in Federal funds.

The estimated cost for the Emergency Assistance Program during fiscal year 1985 is $3,245,000—$2,250,000 in appropriated funds, and $995,000 in Federal money.

In an essential partnership effort, private organizations offer additional shelter at no cost to the District. These facilities offer shelter to more than 1,600 individuals and to six families.

Much has been done to meet the needs of the homeless in the District, and a number of new efforts are underway.

NEW EFFORTS TO HELP HOMELESS

On October 21, 1982, Mayor Barry established a Commission on Homelessness, comprised of 22 persons from the government and private sector. The commission advises the Mayor how to best meet the needs of the homeless and how to reduce the problem.

Last November, the District established the Office of Emergency Shelter and Support Services to help deliver comprehensive assistance to the homeless.

D.C. Council Member H.R. Crawford, Chairman of the Metropolitan Washington Council of Governments, formed an Inter-Jurisdictional Task Force on Homelessness. One goal was to put in place an agreement among jurisdictions in the Washington area to share shelter resources, with payment for services. The agreement was signed last October.

During this same period, the department's expenditures for the shelter program totaled $13,432,159.

In addition, the District government was awarded a grant for $1.4 million this month from the Robert Woods Johnson/Pew Memorial Trust Foundation, which will be used to develop more effective health services for homeless persons.

DEINSTITUTIONALIZATION OF MENTALLY ILL

There are disagreements about the relative importance of the various factors causing the increase in homelessness in recent years. There is general agreement, however, that deinstitutionalization of the mentally ill is a significant cause. Although the goals of the policy change are valid, the experience of nearly every city and State in the country reveals flaws in the implementation of the policy which must be corrected.

In the District, we are operating under a court-ordered deinstitutionalization mandate, while at the same time the passage last November of initiative 17—that would mandate that the District offer shelter to every individual who seeks it—has become the focus of both local and national attention.

Mr. Chairman, I have provided additional information on our deinstitutionalization experience and on the initiative 17 issue in an attachment to this statement which I will not read in the interest of time.

A critical step to resolve the problem of the dual mental health system was taken last October when Congress passed legislation that requires the District to assume authority for a comprehensive mental health system by October 1, 1987. This is both a challenge and an opportunity for systematic change which will improve community services. Continued Federal support is essential to the success of this effort.

A single budget accountability for allocating resources to the patient's needs is an important management tool. There will, of course, be a transition period of several years that will require some duplication of expenditure, some staff retraining, and very careful planning and management.

Senator SPECTER. Mr. Rivers, are you close to the conclusion?

Mr. RIVERS. Yes.

The national scope of this issue of homelessness is underlined by data gathered during the past several years by the U.S. Conference of Mayors. In studies of 10 cities published last June, the conference found that all 10 cities had experienced recent increases in the demand for emergency shelter, in spite of a decrease in the unemployment rate; and all 10 reported that a substantial proportion of the homeless were mentally ill. Officials in these cities said primary causes for the increase in homelessness were: Lack of housing that low-income people can afford; the economy; deinstitutionalization, other mental health policies; and reductions in Federal benefit programs.

CITIES NEED HELP

Mr. Chairman, there is no real question that the homeless population today is a major national problem, that its numbers continue to increase, and that a high percentage of these persons have mental ailments.

Equally documented, I believe, is the link between homelessness and Federal Government actions that have come down hard on those most in need of help. But it is the cities, with help from community agencies, churches, and other private sector groups, that have had to cope with this problem. Certainly, the Department of Human Services will continue to try to do its best to help homeless individuals with their immediate needs and long-term problems.

We also have a management responsibility, however, to match spending with available resources for a balanced budget. To go beyond the provision of shelter and a meal, and to make substantial and lasting progress in reducing the homeless population is simply beyond the capability of the District and other cities. We cannot do it alone.

The answer is a clear, firm, and lasting commitment by the Federal Government to join its cities as a partner in helping alleviate this tragic problem.

Thank you for the opportunity to testify on this critical issue.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Rivers. We have your complete statement and it will be inserted in the record.

[The statement follows:]

STATEMENT OF DAVID E. RIVERS

IT IS A PRIVILEGE TO APPEAR TODAY BEFORE THIS COMMITTEE TO DISCUSS THE ISSUE OF AIDING HOMELESS PERSONS WHO ARE MENTALLY ILL.

THIS IS A COMPLEX AND CRITICAL PROBLEM, AND IT IS WORSENING. THE RANKS OF THE HOMELESS, WHO ARE FOUND ACROSS THE COUNTRY IN CITIES OF ALL SIZES, ARE GROWING. A SIGNIFICANT NUMBER HAVE MENTAL AILMENTS.

NATIONAL PROBLEM

IT IS CLEAR THAT THIS IS A PROBLEM THAT SPANS THE NATION AND ONE THAT CANNOT BE ADEQUATELY ADDRESSED ON A SCATTERED BASIS WITH ONLY LOCAL RESOURCES. THIS IS A NATIONAL PROBLEM, STEMMING IN PART FROM FEDERAL ACTIONS, THAT CALLS FOR AN APPROPRIATE FEDERAL RESPONSE THROUGH INCREASED ASSISTANCE, AND CONTINUED HELP FROM TRADITIONAL PRIVATE AGENCIES AND CHURCHES AS WELL.

THERE ARE NO FIRM FIGURES TO MEASURE THE NATION'S HOMELESS POPULATION, AND ESTIMATES VARY. A LOCAL ACTIVIST GROUP, THE COMMUNITY FOR CREATIVE NON-VIOLENCE, CITES A FIGURE OF TWO MILLION. THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ON THE OTHER HAND, SETS THE NUMBER BETWEEN 250,000 AND 350,000, WITH A MAXIMUM OF 580,000 AT ANY ONE TIME.

WHAT IS CLEAR IS THAT THE PROBLEM IS NATION-WIDE AND EXISTS IN EVERY REGION OF THE COUNTRY, WITH MOST OF THE HOMELESS CONCENTRATED IN METROPOLITAN AREAS OF 250,000 OR MORE.

STUDIES INDICATE THAT THE HOMELESS FALL WITHIN THREE GENERAL CATEGORIES: THOSE WITH CHRONIC DISABILITIES, THOSE WITH PERSONAL CRISIS AND THOSE AFFECTED BY ECONOMIC CONDITIONS. CONTRIBUTING FACTORS BEHIND THE NATIONAL HOMELESS STATISTICS INCLUDE:

- POLICY CHANGES IN THE FEDERAL DISABILITY BENEFIT PROGRAM REQUIRING STRINGENT CASE REVIEWS AND TERMINATION OF BENEFITS WHILE APPEALS ARE PENDING;

- EFFECTS OF PAST INFLATION RATES ON PUBLIC ASSISTANCE BENEFITS LEVELS, WHICH HAVE REDUCED REAL BUYING POWER;

- FEDERAL CUTBACKS IN ELIGIBILITY FOR PUBLIC ASSISTANCE BENEFITS;
- DEINSTITUTIONALIZATION POLICIES IN STATE MENTAL HEALTH SYSTEMS; THESE POLICIES REQUIRE THAT HOSPITALS NOT ADMIT PATIENTS WHO DO NOT NEED FULL HOSPITAL CARE, AND THAT OFFICIALS FIND COMMUNITY CARE ALTERNATIVES FOR THOSE WHO CAN MORE EFFECTIVELY BE TREATED IN OTHER SETTINGS.
- HIGH UNEMPLOYMENT, A DECLINE IN LOW-SKILLED JOBS, AND AN INCREASE IN TRANSIENTS SEEKING WORK BUT UNABLE TO FIND IT; AND,
- THE LOSS OF LOW-INCOME HOUSING UNITS DUE TO ABANDONMENT, DECAY, RENOVATIONS, GOVERNMENT CUTBACKS.

D.C. HOMELESS

IN THE DISTRICT OF COLUMBIA, THERE ARE THE SAME LONG-TERM FACTORS MATCHED WITH THE IMMEDIATE PROBLEMS OF THOSE SEEKING SHELTER: PHYSICAL AND MENTAL ILLNESS, DRUG ABUSE AND ALCOHOLISM, FAMILY DISPUTES AND BREAKUPS AND EVICTIONS. AS IS TRUE NATIONALLY, WE HAVE NO HARD FIGURES ON THE NUMBER OF HOMELESS HERE. ESTIMATES RANGE FROM 2,000 TO 15,000. WE ALSO LACK DATA ON WHAT PERCENTAGE OF THESE INDIVIDUALS HAVE MENTAL AILMENTS. HOWEVER, OUR EXPERIENCE INDICATES THAT ABOVE HALF OF THOSE WHO SEEK SHELTER AT FACILITIES SUPPORTED BY THE DEPARTMENT OF HUMAN SERVICES WOULD BENEFIT FROM MENTAL HEALTH SERVICES. SOME HAVE BEEN PATIENTS AT SAINT ELIZABETHS HOSPITAL BEFORE.

THIS DEPARTMENT CURRENTLY IS PROVIDING SHELTER FOR THE HOMELESS THROUGH CONTRACTS AT EIGHT FACILITIES -- FOUR FOR FAMILIES, TWO FOR MEN, ONE FOR WOMEN AND ONE FOR ABUSED WOMEN AND THEIR CHILDREN. AT THESE EIGHT HOMES, WE CURRENTLY ARE OFFERING SHELTER FOR UP TO 95 FAMILIES, 400 MEN, 65 WOMEN PLUS 21 BEDS AT THE HOME FOR BATTERED WOMEN AND THEIR CHILDREN. IN ADDITION, WHEN THESE FACILITIES ARE FULL, HOMELESS PERSONS ARE PLACED ON A SPOT BASIS AT OTHER SHELTERS IN THE WASHINGTON AREA.

DURING THE CURRENT FISCAL YEAR, THE DISTRICT EXPECTS TO PROVIDE A TOTAL OF 265,100 NIGHTS OF SHELTER. THE ESTIMATED COST IS $3,871,000 -- $3.6 MILLION IN APPROPRIATED MONEY AND $271,000 IN FEDERAL FUNDS.

THE ESTIMATED COST FOR THE EMERGENCY ASSISTANCE PROGRAM DURING FISCAL YEAR 1985 IS $3,245,000 — $2,250,000 IN APPROPRIATED FUNDS AND $995,000 IN FEDERAL MONEY.

IN AN ESSENTIAL PARTNERSHIP EFFORT, PRIVATE ORGANIZATIONS OFFER ADDITIONAL SHELTER AT NO COST TO THE DISTRICT. THESE FACILITIES OFFER SHELTER TO MORE THAN 1,600 INDIVIDUALS AND TO SIX FAMILIES.

DISTRICT'S INITIATIVES

MUCH HAS BEEN DONE TO MEET THE NEEDS OF THE HOMELESS IN THE DISTRICT AND A NUMBER OF NEW EFFORTS ARE UNDERWAY. WE BELIEVE THAT THIS CITY HAS TAKEN THE LEAD IN PROVIDING PROGRAMS FOR THE HOMELESS, BUT IT IS A SIGN OF THE SCOPE AND SEVERITY OF THIS NATIONAL PROBLEM THAT SO MUCH REMAINS TO BE DONE.

OUR MAJOR INITIATIVES INCLUDE:

- ON OCTOBER 21, 1982, MAYOR BARRY ESTABLISHED A COMMISSION ON HOMELESSNESS, COMPRISED OF 22 PERSONS FROM THE GOVERNMENT AND PRIVATE SECTOR. THE COMMISSION ADVISES THE MAYOR ON HOW TO BEST MEET THE NEEDS OF THE HOMELESS AND HOW TO REDUCE THE PROBLEM.

- LAST NOVEMBER, THE DISTRICT ESTABLISHED THE OFICE OF EMERGENCY SHELTER AND SUPPORT SERVICES TO HELP DELIVER COMPREHENSIVE ASSISTANCE TO THE HOMELESS.

- THE DEPARTMENT'S COMMISSION ON SOCIAL SERVICES, IN COORDINATION WITH THE COMMISSION ON HOMELESSNESS, CONDUCTED THE FIRST METROPOLITAN AREA CONFERENCE ON THE HOMELESS IN JULY, 1983. THE CONFERENCE EXAMINED THE PROBLEM, HEIGHTENED PUBLIC AWARENESS AND BEGAN TO SEEK NEW STRATEGIES FOR CHANGE.

- D.C. COUNCILMEMBER H.R. CRAWFORD, CHAIRMAN OF THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS, FORMED AN INTERJURISDICTIONAL TASK FORCE ON HOMELESSNESS. ONE GOAL WAS TO PUT IN PLACE AN AGREEMENT AMONG JURISDICTIONS IN THE WASHINGTON AREA TO SHARE SHELTER RESOURCES, WITH PAYMENT FOR SERVICES. THE AGREEMENT WAS SIGNED LAST OCTOBER.

- SINCE 1980, THE DEPARTMENT HAS PROVIDED FUNDS EACH YEAR THROUGH ITS EMERGENCY ASSISTANCE PROGRAM. THIS PROGRAM OFFERS ONE-TIME CASH ASSISTANCE TO HELP THE INDIVIDUAL MAINTAIN INDEPENDENT LIVING. A SIGNIFICANT PROPORTION OF THE $9,767,118 AWARDED BETWEEN 1980 AND 1984 WAS FOR OVERDUE RENT, WHICH PREVENTED EVICTIONS AND POSSIBLE HOMELESSNESS.

- DURING THIS SAME PERIOD, THE DEPARTMENT'S EXPENDITURES FOR THE SHELTER PROGRAM TOTALLED $13,432, 159.

- THE CITY GOVERNMENT WAS AWARDED A $1.4 MILLION GRANT THIS MONTH FROM THE ROBERT WOODS JOHNSON/PEW MEMORIAL TRUST FOUNDATION THAT WILL BE USED TO DEVELOP MORE EFFECTIVE HEALTH SERVICES FOR HOMELESS PERSONS.

- THE DEPARTMENT'S MENTAL HEALTH SERVICES ADMINISTRATION, THROUGH A CONTRACT WITH THE LUTHERAN SOCIAL SERVICES, PROVIDES CONSULTATION, SUPPORT AND TRAINING AT NINE SHELTERS, LINKS PATIENTS WITH OTHER SERVICES, AND OFFERS DIRECT MENTAL HEALTH SERVICES TO A CASELOAD OF 85 PERSONS A MONTH.

- OUR ADMINISTRATION'S CRISIS RESOLUTION UNIT AND MOBILE TREATMENT UNIT ARE ALSO AVAILABLE FOR ACUTE PROBLEM RESOLUTION AMONG THE HOMELESS. MHSA COLLECTS DATA SEMI-ANNUALLY ON HOMELESS PEOPLE SERVED BY THE CENTERS, AND HAS DEVELOPED A COMMUNITY EDUCATION TRAINING MODULE ON HOMELESSNESS.

- IN THE AREA OF ALCOHOL AND DRUG ABUSE, THE CENTRAL INTAKE/ADMISSIONS UNIT OF THE ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION PROVIDES PHYSICAL EXAMINATIONS AND MEDICAL EVALUATIONS, BLOOD CHEMISTRY ANALYSIS AND URINALYSIS, SOCIAL HISTORY, COUNSELING AND APPROPRIATE REFERRALS.

- IN PREVENTIVE HEALTH PROGRAMS, SHELTER RESIDENTS ARE SCREENED FOR TB, INFECTIOUS DISEASES, AND VD; THEY ARE REFERRED TO PUBLIC HEALTH CLINICS FOR TREATMENT.

DEINSTITUTIONALIZATION AND INITIATIVE 17

THERE ARE DISAGREEMENTS ABOUT THE RELATIVE IMPORTANCE OF THE VARIOUS FACTORS CAUSING THE INCREASE IN HOMELESSNESS IN RECENT YEARS. THERE IS GENERAL AGREEMENT, HOWEVER, THAT DEINSTITUTIONALIZATION OF THE MENTALLY ILL IS A SIGNIFICANT CAUSE. ALTHOUGH THE GOALS OF THE POLICY CHANGE ARE VALID, THE EXPERIENCE OF NEARLY EVERY CITY AND STATE IN THE COUNTRY REVEALS FLAWS IN THE IMPLEMENTATION OF THE POLICY WHICH MUST BE CORRECTED.

IN THE DISTRICT, WE ARE OPERATING UNDER A COURT-ORDERED DEINSTITUTIONALIZATION MANDATE, WHILE AT THE SAME TIME THE PASSAGE LAST NOVEMBER OF INITIATIVE 17 -- THAT WOULD MANDATE THAT THE DISTRICT OFFER SHELTER TO EVERY INDIVIDUAL WHO SEEKS IT -- HAS BECOME THE FOCUS OF BOTH LOCAL AND NATIONAL ATTENTION.

MR. CHAIRMAN, I HAVE PROVIDED ADDITIONAL INFORMATION ON OUR DEINSTITUTIONALIZATION EXPERIENCE AND ON THE INITIATIVE 17 ISSUE IN AN ATTACHMENT TO THIS STATEMENT THAT I WILL NOT READ IN THE INTEREST OF TIME.

COMPREHENSIVE LOCAL SYSTEM

A CRITICAL STEP TO RESOLVE THE PROBLEM OF THE DUAL MENTAL HEALTH SYSTEM WAS TAKEN LAST OCTOBER WHEN CONGRESS PASSED LEGISLATION THAT REQUIRES THE DISTRICT TO ASSUME AUTHORITY FOR A COMPREHENSIVE MENTAL HEALTH SYSTEM BY OCTOBER 1, 1987. THIS IS BOTH A CHALLENGE AND AN OPPORTUNITY FOR SYSTEMATIC CHANGE WHICH WILL IMPROVE COMMUNITY SERVICES. CONTINUED FEDERAL SUPPORT IS ESSENTIAL TO THE SUCCESS OF THIS EFFORT.

A SINGLE BUDGET ACCOUNTABLITY FOR ALLOCATING RESOURCES TO THE PATIENT'S NEEDS IS AN IMPORTANT MANAGEMENT TOOL. THERE WILL, OF COURSE, BE A TRANSITION PERIOD OF SEVERAL YEARS THAT WILL REQUIRE SOME DUPLICATION OF EXPENDITURE, SOME STAFF RETRAINING, AND VERY CAREFUL PLANNING AND MANAGEMENT. THAT IS A COMPLEX AND DIFFICULT TASK, WHICH WE ARE NOW UNDERTAKING IN A SPECIAL PROJECT OFFICE.

WE WILL ALSO TAKE ADVANTAGE OF THE KNOWLEDGE WE HAVE GAINED IN RECENT YEARS AS WE DESIGN OUR NEW SYSTEM. THE GOALS OF DEINSTITUTIONALIZATION ARE STILL VALUABLE: TREATMENT IN THE NATURAL SETTING WHERE POSSIBLE, INDIVIDUALIZED RATHER THAN MASS TREATMENT, SERVICES THAT ARE SENSITIVE TO

DIFFERENCES OF CULTURE; A BROAD RANGE OF TREATMENT ALTERNATIVES WHOSE USE IS DETERMINED BY PATIENT NEEDS; FLEXIBILITY TO ADAPT SERVICES AS PATIENT NEEDS CHANGE.

HOWEVER, WE WILL NEED TO WORK HARDER TO CREATE IN THE COMMUNITY THAT COMPREHENSIVE RANGE OF FUNCTIONS THAT THE INSTITUTION PROVIDES, ESPECIALLY TO INDIVIDUALS WHO LACK THE ABILITY TO ORGANIZE THEIR OWN LIFE SUPPORTS. WE MUST FACE THE FACT THAT IT IS EXPENSIVE TO TREAT THE MOST SERIOUSLY ILL IN THE COMMUNITY, ESPECIALLY IF A GENUINE EFFORT IS TO BE MADE TO CONTINUE PREVENTIVE SERVICES, AND SERVICES TO THOSE LESS ILL AT THE SAME TIME.

WE MUST ALSO FIND WAYS TO IDENTIFY, TRAIN AND RETAIN STAFF IN ONE OF THE MOST DEMANDING SERVICE SYSTEMS. AND FINALLY, WE MUST FIND A BALANCE BETWEEN ENCOURAGING A PATIENT'S RIGHTS AND RESPONSIBILITIES ON THE ONE HAND, AND ON THE OTHER HAND TAKING THE RISK OF LOSING HIM OR HER TO A POTENTIALLY DANGEROUS AND INHUMANE SITUATION.

CONFERENCE OF MAYORS' FINDINGS

THE NATIONAL SCOPE OF THIS ISSUE OF HOMELESSNESS IS UNDERLINED BY DATA GATHERED DURING THE PAST SEVERAL YEARS BY THE UNITED STATES CONFERENCE OF MAYORS. THESE FINDING WERE REPORTED LAST OCTOBER TO THE INTERGOVERNMENTAL RELATIONS AND HUMAN RESOURCES SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS BY MAYOR BARRY -- A MEMBER OF THE CONFERENCE OF MAYORS' TASK FORCE ON JOBLESSNESS AND HUNGER.

IN STUDIES OF 10 CITIES PUBLISHED LAST JUNE, THE CONFERENCE FOUND THAT:

- ALL 10 CITIES HAD EXPERIENCED RECENT INCREASES IN THE DEMAND FOR EMERGENCY SHELTER DURING THE LAST FEW YEARS, IN SPITE OF A DECREASE IN THE UNEMPLOYMENT RATE; AND,

- ALL 10 REPORTED THAT A SUBSTANTIAL PROPORTION OF THE HOMELESS WERE MENTALLY ILL.

OFFCIALS IN THESE CITIES SAID PRIMARY CAUSES FOR THE INCREASE HOMELESSNESS WERE:

- LACK OF HOUSING THAT LOW-INCOME PEOPLE CAN AFFORD;
- THE ECONOMY;
- DEINSTITUTINALIZATION AND OTHER MENTAL HEALTH POLICIES; AND,
- REDUCTIONS IN FEDERAL BENEFIT PROGRAMS.

FEDERAL ROLE

MR. CHAIRMAN, THERE IS NO REAL QUESTION THAT THE HOMELESS POPULATION TODAY IS A MAJOR NATIONAL PROBLEM, THAT ITS NUMBERS CONTINUE TO INCREASE AND THAT A HIGH PERCENTAGE OF THESE PERSONS HAVE MENTAL AILMENTS.

EQUALLY DOCUMENTED, I BELIEVE, IS A LINK BETWEEN HOMELESSNESS AND FEDERAL GOVERNMENT ACTIONS THAT HAVE COME DOWN HARD ON THOSE MOST IN NEED OF HELP IN MAKING THEIR WAY.

BUT IT IS THE CITIES, WITH HELP FROM COMMUNITY AGENCIES, CHURCHES AND OTHER PRIVATE SECTOR GROUPS, THAT HAVE HAD TO COPE WITH THIS PROBLEM.

CERTAINLY, THE DEPARTMENT OF HUMAN SERVICES WILL CONTINUE TO TRY TO DO ITS BEST TO HELP HOMELESS INDIVIDUALS WITH THEIR IMMEDIATE NEEDS AND THEIR LONG-TERM PROBLEMS.

WE ALSO HAVE A MANAGEMENT RESPONSIBILITY, HOWEVER, TO MATCH SPENDING WITH AVAILABLE RESOURCES FOR A BALANCED BUDGET. TO GO BEYOND THE PROVISION OF SHELTER AND A MEAL, AND TO MAKE SUBSTANTIAL AND LASTING PROGRESS IN REDUCING THE HOMELESS POPULATION, IS SIMPLY BEYOND THE CAPABILITY OF THE DISTRICT AND OTHER CITIES.

WE CANNOT DO IT ALONE. THE ANSWER IS A CLEAR, FIRM AND LASTING COMMITMENT BY THE FEDERAL GOVERNMENT TO JOIN ITS CITIES AS A PARTNER IN HELPING TO ALLEVIATE THIS TRAGIC PROBLEM.

THANK YOU FOR THE OPPORTUNITY TO TESTIFY ON THIS CRITICAL ISSUE.

ATTACHMENT

DEINSTITUTIONALIZATION

THE DISTRICT OF COLUMBIA'S DEINSTITUTIONALIZATION MANDATE STEMS FROM A CLASS ACTION SUIT BROUGHT ON BEHALF OF HOSPITALIZED MENTAL PATIENTS IN 1975. THE COURT ORDERED SAINT ELIZABETHS HOSPITAL TO PREPARE PATIENTS

FOR OUPLACEMENT INTO MORE APPROPRIATE TREATMENT SETTINGS: IT MANDATED THE DISTRICT GOVERNMENT TO ESTABLISH AND MAINTAIN ADEQUATE COMMUNITY CARE FOR THOSE PERSONS WHO COULD BENEFIT FROM SUCH SETTINGS.

A CONSENT DECREE AND AN IMPLEMENTATION PLAN FOLLOWED, NOW KNOWN AS THE DIXON PLAN. IT REQUIRES THE DEVELOPMENT OF COMMUNITY-BASED FACILITIES AND SERVICES WHEN HOSPITALIZATION IS CLINICALLY JUDGED UNNECESSARY, AND THE PROVISION OF A CONTINUUM OF SERVICES COORDINATED BY SAINT ELIZABETHS AND THE DISTRICT.

SINCE 1955, THE HOSPITAL CENSUS HAS BEEN REDUCING STEADILY, FROM A PEAK OF ABOUT 7,000 PATIENTS. FROM 1980, WHEN THE DIXON IMPLEMENTATION PLAN WENT INTO EFFECT UNTIL 1984, THE NUMBER OF PATIENTS FELL BY 18 PERCENT, FROM 2072 TO 1962. HOWEVER, THE NUMBER OF ADMISSIONS TO THE HOSPITAL REMAINED ABOUT THE SAME. THE DIFFERENCE WAS IN MUCH SHORTER LENGTHS OF STAY. WHAT IS HAPPENING IS THAT SOME PATIENTS ARE GETTING STABILIZED AND FUNCTIONAL IN A SHORTER PERIOD OF TIME. OTHERS, NOT SICK ENOUGH TO NEED PERMANENT HOSPITAL CARE BUT TOO SICK TO FUNCTION WELL INDEPENDENTLY, ARE NOT GETTING THE KIND OF COMPREHENSIVE CARE THEY NEED IN THE COMMUNITY, AND BECOME THE "REVOLVING DOOR" PATIENTS WE MUST FIND BETTER WAYS TO SERVE.

OUR PROBLEMS ARE NOT UNLIKE THOSE ELSEWHERE, WHERE STATE HOSPITAL BUDGETS CONTINUE TO REQUIRE MAJOR RESOURCES AND LOCAL GOVERNMENTS DO NOT HAVE SUFFICIENT RESOURCES OR SKILLS TO CREATE EXTENSIVE NEW COMMUNITY SERVICES. ONE REASON FOR THIS IS FINANCIAL. THE INPATIENT PORTION OF THE HOSPITAL BUDGET HAS IN THE LAST SIX YEARS GROWN FROM ABOUT 47 MILLION TO ABOUT 73 MILLION, AN INCREASE OF 55 PERCENT. UNDER PRESSURE TO INCREASE ITS CONTRIBUTION TO THE HOSPTIAL, THE DISTRICT HAS ONLY BEEN ABLE TO INCREASE ITS LOCAL BUDGET BY 60 PERCENT, FROM 9.8 MILLION TO 15.7 MILLION AS FEDERAL BLOCK GRANT AND COMMUNITY MENTAL HEALTH CENTER FUNDS HAVE BEEN WITHDRAWN. ANOTHER REASON FOR THE PROBLEM IS THE DUAL SYSTEM ITSELF. RECORDS AND DATA COLLECTION ARE INDEPENDENT, EVALUATION AND TREATMENT DECISIONS ARE SEPARATE, ADMISSIONS PRACTICES ARE NOT MONITORED UNIFORMLY TO REINFORCE COMMUNITY SERVICES. THE TRANSFER OF CASE MANAGEMENT RESPONSIBILITY FROM ONE SYSTEM TO ANOTHER DOES NOT SERVE THE PATIENTS WELL. THE SITUATION

RESULTED ABOUT A YEAR AGO IN A COURT-ORDERED MORATORIUM ON OUTPLACEMENTS TO DISTRICT FACILITIES, IN PRINCIPLE BRINGING DEINSTITUTIONALIZATION TO A HALT.

ALTHOUGH DURING 1984 WE UNDERTOOK A RENEWED OUTPLACEMENT EFFORT FOR THOSE NEEDING NURSING CARE, AND FOR "HARD TO PLACE" PATIENTS, THE PROBLEMS ARE FAR FROM RESOLVED AND THE NUMBER OF PERSONS UNDER SERVED BY THE PRESENT SYSTEM CONTINUES TO BE TOO HIGH. THERE CAN BE NO QUESTION THAT THESE SYSTEMATIC INADEQUACIES IN IMPLEMENTING DEINSTITUTIONALIZATION POLICY IN THE DISTRICT HAVE CONTRIBUTED TO THE NUMBER OF PERSONS WHO FIND THEMSELVES HOMELESS AND WITHOUT PROPER CARE AND PROTECTION.

INITIATIVE 17

MR. CHAIRMAN, THE CURRENT SEVERE DEMAND FOR SHELTER FOR THE HOMELESS WOULD ESCALATE IN THE DISTRICT OF COLUMBIA UNDER THE PROVISIONS OF INITIATIVE 17. THIS INITIATIVE, WHICH WAS APPROVED BY THE VOTERS NOVEMBER 6, WOULD REQUIRE THE DISTRICT TO GUARANTEE SHELTER EVERY NIGHT TO EVERY HOMELESS PERSON IN THE CITY SEEKING SHELTER.

THE DISTRICT GOVERNMENT, WHICH OPPOSED PLACING THE INITIATIVE ON THE BALLOT, NOW IS ASKING THE COURT TO RULE THAT THE SHELTER REQUIREMENT BE INVALIDATED. MOTIONS FOR A SUMMARY JUDGEMENT BY BOTH PARTIES ARE AWAITING SUPERIOR COURT ACTION.

MAYOR BARRY'S ADMINISTRATION SHARES THE CONCERN AND THE COMPASSION FOR THESE HOMELESS PEOPLE THAT WERE CLARLY REFLECTED IN THE VOTERS' APPROVAL OF THIS REFERENDUM. WE BELIEVE, HOWEVER, THAT THIS APPROACH THROUGH A BALLOT INITIATIVE IS WRONG ON BOTH LEGAL AND PROGRAMMATIC GROUNDS.

THE INITIATIVE IS INVALID, IN OUR VIEW, BECAUSE ITS MANDATORY PROVISIONS ARE AFFIRMATIVE EFFORTS TO APPROPRIATE FUNDS, WHICH IS BEYOND THE AUTHORITY OF VOTER INITIATIVES UNDER THE CHARTER AND CASE LAW OF THE DISTRICT OF COLUMBIA.

INITIATIVE 17 ALSO WOULD ERODE, RATHER THAN STRENGTHEN, OUR ASSISTANCE TO THE HOMELESS. FUNDS FOR A RANGE OF SUPPORT SERVICES FOR THE HOMELESS, ALONG WITH MONEY TO MEET OTHER ESSENTIAL COMMUNITY NEEDS, WOULD HAVE TO

BE SHIFTED TO PAY FOR OVERNIGHT SHELTER ALONE. THESE DEPENDENT RESIDENTS WOULD THUS HAVE A BED AT NIGHT, BUT MIGHT BE LEFT TO COPE FOR THEMSELVES DURING THE DAY.

INITIATIVE 17 WAS THE FIRST INITIATIVE IN THE NATION TO GUARANTEE OVERNIGHT SHELTER TO THE HOMELESS. THIS PROMISE OF A BED EACH NIGHT WOULD BE EXPECTED TO BE A MAGNET THAT WOULD DRAW HOMELESS PERSONS FROM OTHER AREAS. THIS WOULD WIDEN THE GAP BETWEEN AVAILABLE RESOURCES AND THE DEMAND FOR SERVICES.

THE INITIATIVE DOES STATE THAT PERSONS WHO COME TO THE DISTRICT FOR THE EXPRESS PURPOSE OF OBTAINING SHELTER WOULD NOT BE COVERED. IT IS QUESTIONABLE, HOWEVER, WHETHER THIS EXCLUSION IS LEGAL, AND IT IS DOUBTFUL THAT THE PROVISION COULD BE ENFORCED.

FINALLY, THE INITIATIVE -- IF CARRIED OUT -- WOULD MEAN FURTHER COURT INTERVENTION IN THE CITY GOVERNMENT'S PROGRAM OPERATIONS. THE COURTS COULD AWARD DAMAGES AND ATTORNEYS' FEES AND/OR ISSUE AN INJUNCTION UPON A FINDING THAT THE DISTRICT GOVERNMENT HAD FAILED TO PROVIDE ADEQUATE OVERNIGHT SHELTER TO AN ELIGIBLE INDIVIDUAL.

St. Elizabeths Hospital

STATEMENT OF DR. WILLIAM G. PRESCOTT, SUPERINTENDENT, ST. ELIZABETHS HOSPITAL

Senator Specter. Dr. Prescott, Superintendent of St. Elizabeths Hospital. Thank you for joining us, Dr. Prescott.

Dr. Prescott. Thank you.

Senator Specter and members of the committee, thank you for the opportunity for appearing before you today. I am William G. Prescott, Superintendent of St. Elizabeths Hospital, and have been in that position for approximately 1 year. I am a career officer in the Commissioned Corps of the U.S. Public Health Service and have served in a variety of posts. Most recently, prior to coming to St. Elizabeths Hospital, I directed the Cuban-Haitian Refugee Mental Health Program. Prior to that, I was in charge of psychiatric services at the Public Health Service Hospital in San Francisco.

PREPARED STATEMENTS

My colleague, Mr. Jim Stockdill, of NIMH, has prepared a statement concerning the national aspects of this topic, and that is available to be submitted for the record, if you so choose.

Senator SPECTER. We will make it a part of the record, as we will make your statement.

Dr. PRESCOTT. Thank you.

[The statements follow:]

STATEMENT OF JAMES W. STOCKDILL

Mr. Chairman, I am James Stockdill, Director of the Office of State and Community Liaison, at the National Institute of Mental Health. Also present today is Dr. William Prescott, Superintendent of St. Elizabeths Hospital.

Before I turn to the topic of deinstitutionalization and the homeless, I would like to give you a brief overview of the history of recent Federal actions to help the homeless. Although the Department of Health and Human Services (HHS) has long been charged with the responsibility for administering programs for the vulnerable in our society who are elderly and disabled Americans, it has been under the leadership of Secretary Margaret M. Heckler that we have sharpened the focus on the problems of homeless Americans.

The Secretary's deep personal concern over the plight of the homeless was reflected in her decision in October 1983 to create a Federal Interagency Task Force on the Homeless to serve, in her words, "as a catalyst so that the compassionate work which has long been carried on by public and private groups is augmented, supplemented, and strengthened." The Task Force is chaired by HHS and includes representatives from 12 other Federal agencies: the Departments of Agriculture, Defense, Interior, Labor, Housing and Urban Development, and Transportation, as well as the General Services Administration, the Federal Emergency Management Agency, ACTION, the Census Bureau, the Veterans Administration, and the Postal Service.

Related to this effort, Secretary Heckler has also established an internal Department of Health and Human Services Task Force on Food and Shelter for the Homeless comprised of each of the HHS agencies that control programs or benefits that might be used to help the homeless.

The vast majority of projects to assist the homeless are being undertaken by State and local governments and the private sector, including businesses, local non-profit groups, churches and synagogues, and other voluntary organizations. There is also a considerable array of existing resources at the Federal level which have not been adequately targeted to the needs of the homeless.

The Task Force's role is to coordinate Federal efforts, to cut red tape so that existing resources are targeted more effectively towards the problems of the homeless, to act as a source of information for Congress and the White House, and generally to act as a "broker" between local providers of shelter (whether public or private) and the Federal Government. This approach reflects President Reagan's emphasis on community initiative and responsibility in partnership with Federal technical and material assistance. The underlying philosophy is that the needs of the homeless are best assessed and then met through local government and private and/or philanthropic organizations.

With regard to the size and makeup of the homeless population, definitive data do not exist. In the absence of such data, some advocates for the homeless have claimed that the national total is as high as two million persons, and this estimate has achieved fairly wide currency. In May 1984, the Secretary of the Department of Housing and Urban Development, Samuel R. Pierce, Jr., released a national study of those homeless which concluded that, on any one night, "as best as can be determined from all available data, the most reliable range is 250,000 to 350,000 homeless persons." According to the report, "this represents the total number of people, nationally, who were homeless on an average night in December 1983 or January 1984." This number includes both the chronically homeless and those who are temporarily without shelter. Because of the large turnover among the temporarily homeless, the cumulative annual count could well range between two or three times the daily total.

Studies indicate that around 66% of the homeless are single men, 13% single women, and 21% family members. Looked at from another perspective, the homeless generally fall into three categories: people who have sufferd recent economic setbacks or eviction, people who have experienced severe, personal crises, and people who are chronically disabled by mental illness and/or alcohol and drug abuse.

It is this third group--the chronically mentally ill and the substance abusers--who are not only numerous among the homeless, but the most difficult to help.

Since the subject of today's hearing is specifically on the homeless mentally ill, I will focus my comments this morning primarily on that population. Therefore, I will describe the scope of the problem, some of the reasons why the chronically mentally ill become or remain homeless, and discuss the relationship between deinstitutionalization and homelessness. Finally, I will describe what the National Institute of Mental Health (NIMH) is doing--as one component of HHS--and what other national mental health organizations are doing to better understand and address this complex problem.

WHAT IS THE SCOPE OF THE PROBLEM?

As mentioned earlier, we have no systematic or uniform national data on their overall numbers, many local studies confirm that a significant proportion of the homeless suffer from chronic mental illness. A recent study of the homeless was funded by NIMH in Ohio. In a sample of 1,000 persons in 32 counties, 18% of the homeless were found to have previously been residents of State mental hospitals. Of those homeless mentally ill who had been hospitalized formerly (the 18%), 53% still had active symptoms that required mental health treatment but did not necessarily require hospitalization. Fewer than 2 to 3 percent of the homeless were found to require psychiatric hospitalization. Preliminary data from studies in New York and Massachusetts appear to be consistent with the data from Ohio.

Often mental health problems are further complicated by secondary problems of alcohol and/or drug abuse.

FACTORS IN THE MENTALLY ILL BECOMING HOMELESS

There are a number of societal or contextual factors that have contributed to the problem of homelessness in America. They include: urban renewal and the lack of low-cost housing; economic problems; the complexity and discontinuity of our social service system; and the disintegration of the nuclear family. Each of these factors also contributes to the problem of homelessness among the mentally ill who, because of their disability, are generally at the bottom-rung of the socio-economic ladder.

Obtaining affordable housing has been the most difficult problem for the chronically mentally ill. Five years ago, there were 53,000 single-room occupancy units in New York City. Now there are 15,000. Between 1970 and 1980, about 1 million rooms--nearly one-half of the nation's total--were converted to other uses or destroyed.

The mentally ill are also particularly vulnerable and at high-risk for becoming or remaining homeless because of certain characteristics of their illness. Persons who are chronically mentally ill most often suffer from schizophrenia, manic-depressive illness, organic brain syndrome, or some other type of major mental disorder. They have one or more functional problems such as: the inability to meet basic survival needs; difficulty with the tasks of daily living; extreme vulnerability to stress; the inability to develop or sustain social networks; and the lack of motivation or ability to seek out the help of human service workers. Because the mentally disabled frequently do not have the skills to negotiate service systems in the community, they are often unable to secure welfare, Social Security benefits, or other entitlements for which they are often eligible.

WHAT IS THE RELATIONSHIP BETWEEN DEINSTITUTIONALIZATION AND HOMELESSNESS?

Over the past 3 decades, we have witnessed dramatic changes in the care of the chronically mentally ill that came about because of a number of factors including: changes in clinical practice, newly enacted legal mandates, and changes in public policy. Prior to the 1950's, mental health service delivery was exclusively in the domain of large public mental hospitals, which were created to assist localities in providing for the needs of their citizenry who needed mental health care. The introduction of psychotropic medication in the early 1950s, however, led to an increase in the number of patients who could live potentially outside the hospital after a short period of stabilization. Also, because of allegations of patient abuse and problems in the quality of care in large, impersonal institutions--which were often physically removed from patients' homes, families, and jobs--there was an increasing interest in the philosophy and practice of community mental health.

In the early 1960s, the pressure to move patients out of institutions was reinforced by civil libertarians who established important legal safeguards for the mentally ill, such as the right of individuals proposed for involuntary commitment to procedural safeguards, and the right to treatment in the least restrictive setting. Since 1963, with the passage of the Community Mental Health Centers Act (Public Law 88-164), over 768 community mental health centers were funded across the country in an effort to create a nationwide system of community-based mental health services. The advent of the new Medicare and Medicaid programs in 1965 and 1967, and the Supplemental Security Income (SSI) program in 1974 provided further fiscal incentives for State policymakers to discharge patients and transfer State expenditures to the Federal Government. In 1955, there were 535,000 psychiatric patients in State hospitals in this country; by 1980, the number had dropped to 137,000. The number is now approximately 126,000.

While the reform efforts of the '50s and '60s emphasized the inhumane conditions in State hospitals, during the last decade, professional and public attention has focused on the problems involved in community placement of the mentally disabled. Although the majority of chronically mentally ill persons have successfully returned to an array of independent and supervised community residential settings, a minority have been relegated to substandard board and care homes, single-room occupancy hotels, inappropriate placement in nursing homes--or are without homes and living in emergency shelters or as you know, on the streets or in the jails of our cities. Additionally, deinstitutionalization has had a profound effect on the locus of services for those young people, between the ages of 18 and 35, who have been diverted from institutions because of more restrictive hospital admissions criteria. This group has been labeled "the young adult chronic" population.

Because there have not always been adequate community resources and public support for the chronically mentally ill, the implementation and success of the deinstitutionalization policy has varied significantly for different States, different communities, and for different individuals. The result has been that many chronically mentally ill individuals do not have access to an adequate number and range of supervised living situations, basic life supports, and other human services that are essential to their ongoing care, treatment, and rehabilitation. Moreover, gaps in the availability of appropriate residential placements have forced many chronically mentally ill persons to rely on shelters in lieu of more appropriate housing.

States and localities realize that responsible community care of the mentally disabled must include more than mental health treatment alone. The mentally disabled also need housing, food, health care, income supports, case management, varying levels of supervision, and in a limited number of cases, long-term treatment in an inpatient setting.

WHAT IS BEING DONE TO ASSIST THE HOMELESS MENTALLY ILL?

To date, most efforts at Federal, State, and local levels have attempted to respond to the immediate, emergency needs of the homeless population. NIMH efforts directed at the homeless mentally ill include:

o In 1982, establishing a focal point for its research and technical assistance activities designed to assist States and localities in serving the homeless with serious and persistent mental disorders.

o Because of the need for more accurate epidemiological data about the homeless mentally ill, in Fiscal Year 1983, NIMH made seven grant awards to State mental health authorities and individual investigators studying the population. We are now beginning to collect improved information on the homeless mentally ill, their characteristics, and service needs.

o In FY 1985, assisting State mental health agencies in working with localities to address this issue, NIMH will be making four to six grant awards for demonstration projects designed to develop and improve innovative approaches to service delivery for the homeless mentally ill.

o Upon request, we provide technical assistance to States, localities, and private organizations in their quest for information about this problem. As part of the broader HHS initiative focused on helping the homeless, we have supported the development of a number of publications focusing on the homeless mentally ill and their special service needs.

o We have provided support to the American Psychiatric Association (APA) which enabled the APA Task Force on the Homeless Mentally Ill to site visit local areas with high concentrations of the homeless mentally ill in order to learn more about the mental health aspects of the problem of homelessness and its potential solutions.

o In March 1985, we are planning to convene a follow-up to a 1983 meeting of front-line shelter and mental health providers to examine approaches to working with this often difficult and hard-to-reach population.

o In December 1984, with a small contract from NIMH, the American Public Health Association (APHA) convened in Washington a national leadership workshop of 14 major mental health organizations to share information on current concerns and to discuss future public policy vis-a-vis the homeless mentally ill.

As a result of that meeting, the National Mental Health Association and the APHA will be conducting ongoing meetings with representatives of each of these organizations to discuss the need for a national strategy to assist chronically mentally ill persons who are homeless or who are at-risk for becoming homeless. Responsibility for the problems of the Nation's homeless mentally ill transcends the mental health community alone. To be successful, ongoing efforts will need to engage other relevant housing, human services, and citizen organizations. The enthusiastic response to this meeting is evidence that the mental health community is ready to take some leadership responsibility and concerted action to address this serious problem.

NIMH's other major efforts related to the homeless mentally ill include the Alcohol, Drug Abuse and Mental Health Services (ADMS) Block Grant (as amended by P.L. 98-509) and the Community Support Program (CSP). In Fiscal Year 1985, approximately $245 million was awarded to the States in the form of ADMS Block Grants for mental health purposes. The States were encouraged to give priority to the problems of the chronically mentally ill. In ADAMHA's 1983 report to Congress on the Alcohol, Drug Abuse and Mental Health Block Grant, it was noted that "almost without exception, the number one service priority of the State mental health commissioners appears to have been service to the chronically mentally ill."

In closing, I would like to note that in summarizing its recommendations, the American Psychiatric Association Task Force on the Homeless Mentally Ill stated, "...the solutions to the problems of the mentally ill homeless are as manifold as the problems they seek to remedy. However, only with comprehensive short- and long-term solutions will the plight of this most neglected population in America be addressed."

Many States and communities are developing strategies to help the homeless mentally ill. Clearly, comprehensive care for the population must involve collaboration across levels of government; across housing, mental health, and human service agencies; and between the public and private sector. Attention must be paid to addressing both the immediate, emergency needs of this population as well as its long-term needs.

The National Institute of Mental Health and each of the component agencies within the Department of Health and Human Services intend to work vigorously with the Congress, State and local governments, and national mental health organizations to examine how the Department's ongoing efforts might be strengthened and improved to assist the seriously mentally ill whose disabilities make them vulnerable to homelessness.

STATEMENT OF DR. WILLIAM G. PRESCOTT

Thank you for the opportunity to appear before you today. I am William G. Prescott, Superintendent of Saint Elizabeths Hospital and have been in that position for slightly more than one year. I am a career officer in the Commissioned Corps of the Public Health Service and have served in a variety of posts; most recently, before Saint Elizabeths Hospital, I directed the Cuban-Haitian Refugee Mental Health Program. Prior to that I was in charge of psychiatric services at the Public Health Services Hospital in San Francisco.

My colleague, Mr. Stockdill, has already presented national information. I wish to inform you briefly on current practices at Saint Elizabeths Hospital and on some of the efforts underway jointly with the District of Columbia to develop a single, unified mental health system in the District for operation by the District government beginning in October, 1987.

At Saint Elizabeths Hospital, admissions come primarily under the D.C. law known as the Ervin Act (21 D.C. Code 501 et seq) which provides for voluntary admissions, emergency admissions, and court ordered indefinite commitments. Under the terms of the statute, the court may commit only if there is likelihood of injury to self or others because of mental illness. Commitment may be to an appropriate setting, other than Saint Elizabeths; thus there may be commitments to nursing homes or to outpatient treatment depending on the patient's needs.

Voluntary admissions do not have to meet the standard of dangerousness but the person seeking admission must be in need of inpatient services for mental illness or eligible to register as a District patient at the Area D Community Mental Health Center operated by Saint Elizabeths Hospital. Emergency admissions — frequently brought in by the police — must by law be discharged within strict time limits unless the Hospital seeks commitment or the patient becomes voluntary.

Court committed patients are not permitted to leave the hospital except on either temporary or convalescent leave; however voluntary patients may sign themselves out— that is choose to leave against medical advice. Both voluntary patients and committed ones do sometimes leave without authorization. For committed patients who are still considered dangerous, a warrant for their return is sought. Voluntary patients who sign themselves out must be released within 48 hours.

Most who leave the hospital do so, however, because they are discharged either because they no longer need psychiatric treatment or no longer need treatment in an inpatient setting and are planning to receive outpatient treatment elsewhere, or because they are placed on outpatient status — called convalescent leave at Saint Elizabeths. (Let me state parenthetically here that the process I have been describing refers only to civil patients — it does not include forensic patients whose admission and discharge is controlled by the courts.)

What does this brief description of patients entering and leaving Saint Elizaeths Hospital have to do with shelters and the homeless? There are several important points:

1) The Hospital is, by law, prohibited from admitting persons unless they need inpatient psychiatric treatment.

2) Persons who cannot be admitted may on occasion be given a shelter address if they have no other place to go.

3) The Hospital can not legally keep persons against their will if they do not meet commitment standards.

4) Many voluntary patients do leave against medical advice and some of those may go to shelters.

5) It is not Hospital policy to discharge a patient to a shelter or to the streets.

6) Hospital policy requires aftercare planning which includes careful attention to the living arrangements for those leaving inpatient treatment.

Research done by Hospital staff shows that many persons in the shelters in the District do have a history of some former contact with Saint Elizabeths Hospital and/or the District mental health services, but there has been little evidence that persons go directly from the Hospital to the shelters or the streets. It also shows that a large portion of those in shelters are mentally ill and could benefit from treatment but not necessarily from inpatient hospitalization.

We are continuing our efforts to learn more about people in the shelters and on the streets so that Saint Elizabeths Hospital may be appropriately involved in providing mental health services. Some Saint Elizabeths Hospital physicians currently volunteer on their own time to provide services in the shelter. The Hospital is arranging for psychiatric residents to work with the District to provide services for the homeless mentally ill under supervision in locations selected by the District. Finally we are extensively involved with the District in planning for the District to assume authority over the entire mental health services system in October, 1987. That planning effort is specifically mandated to consider what is needed for the homeless and will do so. I feel that we have the opportunity to develop solutions for this complex problem which recognizes and makes services available to meet the mental health needs of the homeless in the District. Again, thank you for the opportunity to appear. I will be happy to answer your questions.

THE IRVING ACT

Dr. PRESCOTT. I wish to inform you briefly on current practices at St. Elizabeths Hospital, and on some of the efforts under way jointly with the District of Columbia to develop a single, unified mental health system in the District, for operation by the District government beginning in October 1987.

At St. Elizabeths Hospital, admissions come primarily under the D.C. law known as the Irving Act, which provides for voluntary admissions, emergency admissions, and court-ordered indefinite commitment. Under the terms of the statute, the court may commit only if there is likelihood of injury to self or others because of mental illness. Commitment may be to an appropriate setting other than St. Elizabeths Hospital. Thus, there may be commitment to nursing homes or to outpatient treatment, depending on the patient's needs.

Voluntary admissions do not have to meet the standard of dangerousness, but the person seeking admission must be in need of inpatient services for mental illness, or eligible to register as an outpatient, as a District patient at the Area D Community Mental Health Center, operated by St. Elizabeths Hospital.

Emergency admissions, frequently brought in by the police, must by law be discharged within strict time limits, unless the hospital seeks commitment or the patient becomes a voluntary patient.

Court-committed patients are not permitted to leave the hospital except on either temporary or convalescent leave; however, voluntary patients may sign themselves out—that is, choose to leave against medical advice. Both voluntary patients and committed ones do sometimes leave without authorization. For committed patients who are still considered dangerous, a warrant for their return is sought. Voluntary patients who sign themselves out must be released within 48 hours.

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ADMISSION AND DISCHARGE OF PATIENTS

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Some St. Elizabeths Hospital physicians currently volunteer on their own time to provide services in the shelter. The hospital is arranging for psychiatric residents to work with the District to provide services for the homeless mentally ill under supervision in locations selected by the District.

Finally, we are extensively involved with the District in planning for the District to assume authority over the entire mental health services system in October 1987. That planning effort is specifically mandated to consider what is needed for the homeless and will do so.

I feel that we have the opportunity to develop solutions for this complex problem which recognizes and makes services available to meet the mental health needs of the homeless in the District.

Again, thank you for the opportunity to appear, and I will be happy to answer any questions.

Senator SPECTER. Thank you very much, Dr. Prescott. There will be a number of questions for you when we hear from all those who are present to testify.

I would like to turn now to the Reverend John Steinbruck, First Lutheran Church Services, and chairman of the D.C. Commission on the Homeless.

D.C. COMMISSION ON THE HOMELESS

STATEMENT OF REV. JOHN STEINBRUCK, PASTOR, LUTHER PLACE CHURCH, AND CHAIRMAN, D.C. COMMISSION ON THE HOMELESS

Reverend STEINBRUCK. Good morning, Senator.

Actually, I am pastor of Luther Place Church over at Thomas Circle, just about a mile west of here. The name is incorrect on the sheet. I serve as pastor of that congregation, and some years ago, I believe it was 1977-78, we opened a church along with other communities, the CCNV, and the Sojourners' Community here in Washington. It has been a shelter ever since, and we work inter-religiously to provide emergency care. We also have a complex of houses, a block of homes that go under the name of Wallenburg House, or Bonhoff, or Bethany, Deborah Place, Sarah House—these are shelters for people who have been deinstitutionalized and who have come on the street.

Our idea is to have an emergency shelter as a first level; then, perhaps to move them into a small community house such as Sarah House, and a very few, a small percentage, can move to, say, Deborah Place, where they can gradually reenter society.

I am a bit pressed for time, and I apologize; I have to keep a commitment. So I just want to share a couple of stories. And I really feel almost like an imposter. There are people in this room who work day to day. They are direct shelter providers. They live with the sick and homeless day and night, year-in, year-out, with no days off, and struggle courageously and selflessly. And I do hope at some point, as these hearings begin, that they will be scheduled in, and they will be heard, because I think they have a wealth of experience and unlimited compassion that would be very valuable as the Government moves toward legislation. It is my hope that somehow, their spirit can be communicated to the Congress, that as a nation, we might be as committed to the care of our sick and our vulnerable, our weak that are on the streets, as we are to the protection and defense of this Nation. I am not arguing to be in competition. I just feel that the well-being of our society depends on how we care for our poor, and how we care for those who are sick.

EXAMPLES OF PROBLEMS OF THE HOMELESS

Yesterday in the Washington Post, there was a fascinating story by an editor, Ronald White, who told about a woman that he saw over on 15th Street that, occasionally, he would help. He did not know who she was or where she is, but he did not see her anymore. We feel almost absolutely certain her name is Mary Bailey. She stays in our shelter, and she is very, very ill. I am not a physician, but I think she is very typical of many of the sick homeless, in that her problem goes much deeper than simply being mentally ill—not that that is simple—but we feel that there is a neurological problem. To me, she is exactly like another homeless person who was with us for a couple of years whose problem ultimately was identified as being Huntington's Chorea, and it was identified when he was hit by a truck on the street. And Mary is, I believe, such a person.

My wife did manage to get her into D.C. General Hospital, where she was then moved over to St. Elizabeths. I hope that they diagnose her, and I hope they examine her very closely, so that she does not simply come onto the street, where she is in great, great danger.

Another example was a Rosalie Miller, who for a long time was in our shelter. We saw Rosalie's health declining. Ultimately, she went into D.C. General; finally, she died.

These poor souls need much more intensive, comprehensive care. And we are not able to provide that. We have all we can do to come up with the houses and the buildings to shelter and to provide the meals that they need—just the basic resources for survival.

Another example would be Marilyn O'Hara, who is in our shelter. Finally, we got her to the point where, with medicine, that she could get her own apartment. But then she deteriorated. She was ultimately comatose on the floor, with cockroaches crawling over her, and we just could not get her admitted to the hospital. We pleaded with the emergency squad, we pleaded with the police. And finally, what happens is that shelter providers like ourselves have to resort to all kinds of gymnastics, even rigging situations, in order to get a person admitted.

Renee Jackson, who was in our shelter, was pregnant. She did not believe—she said no, she was not pregnant. Well, my wife finally convinced her, "We have to examine your stomach, Renee," and convinced her to go with her to the hospital. At that point, they created an incident, and had to create the incident, in order that they see that there is a serious illness, and they did agree, then, to admit Renee to St. Elizabeths, where her pregnancy could continue and she could get the proper care.

Those are just a few of the stories, Senator. I can only say—and I think other shelter providers are in the same straits—that we try to manage on virtually no resources. Our buildings are deteriorating; they are intensively used; they are not designed for that purpose. Our volunteers do a heroic job, but it is a wearying, wearying task. My fear is that we cannot continue to come up with a sufficient number of volunteers. There are bad experiences. My wife has been attacked at least three times. It can be dangerous.

What I am trying to simply say is that we do need help and the partnership of the Federal Government. I simply do not believe this has anything to do with ideology. It has to do with compassion.

And I would reiterate again that the well-being, the strength, and the security of our Nation depends on our care of the weak and the sick in our midst.

Senator SPECTER. Thank you very much, Reverend Steinbruck. How long can you stay with us?

Reverend STEINBRUCK. I have got to be in Springfield, VA, to speak to a pastoral association at 11 o'clock, so I really ought to run. But I am available at any time, and so are the other shelter providers.

OPERATION OF THE D.C. COMMISSION FOR THE HOMELESS

Senator SPECTER. Well, just a question or two for you before you go. I had wanted to call the other two witnesses first. But let me ask you what is the operation of the D.C. Commission for the Homeless, of which you are the chairman.

Reverend STEINBRUCK. The commission was appointed from a selection of people, as Mr. Rivers mentioned earlier.

Senator SPECTER. How many members do you have?

Reverend STEINBRUCK. Originally, it was 21. I am not sure of the exact number now.

Senator SPECTER. How often do you meet?

Reverend STEINBRUCK. Monthly, or as often as necessary, and there are committees that meet

Senator SPECTER. How long have you been in existence?

Reverend STEINBRUCK. Two years.

Senator SPECTER. And what have you done?

Reverend STEINBRUCK. We have come up with an agenda of advice to the Mayor to assist the city——

Senator SPECTER. What advice have you given the Mayor?

Reverend STEINBRUCK. For example, hypothermia—that there should be an education process that takes place among the police, that they be able to recognize that this has happened. A film has been made, and the police have been sensitized and are now knowledgeable about hypothermia when they see it.

Senator SPECTER. The Mayor followed your recommendation on that?

Reverend STEINBRUCK. Yes; he has.

Senator SPECTER. What other recommendations have you made?

Reverend STEINBRUCK. One of the first recommendations is that there be a comprehensive emergency program, center, shelter, for women who are mentally ill.

Senator SPECTER. And what was done with that recommendation?

Reverend STEINBRUCK. That was one of the first we made; that has yet to happen.

Senator SPECTER. What other recommendations have you made?

Reverend STEINBRUCK. I cannot come up with the exact list, but basically, it was to ask the city to be very responsive to the needs of the homeless by making buildings available, by helping us to get some kind of legislation whereby we could move with some power to assist people who are in danger to themselves.

Senator SPECTER. Reverend Steinbruck, would you make available to this subcommittee the recommendations you have made to the Mayor, together with your evaluation of what have been the responses by the Mayor and the District of Columbia government?

Reverend STEINBRUCK. Yes.

Senator SPECTER. One final question before you go. You talked about a number of people who were on the street and who were not admitted to institutions, and one who was a woman, as you said, on the floor, with cockroaches walking on her, until you finally got her admitted.

STANDARD FOR ADMISSION FOR MENTALLY ILL

Do you think that the standard for admission for mentally ill is unduly restrictive at the present time?

Reverend STEINBRUCK. I do.

Senator SPECTER. What do you think it should be?

Reverend STEINBRUCK. Again, I am not a psychiatrist. But when I see what I see, and I know someone is very ill, and they are on the steps of our church and sit there for days, weeks, in the elements, deteriorating physically to the point where there are open wounds on their skin, there is festering, there is lice——

Senator SPECTER. And under the law, you cannot get them admitted?

Reverend STEINBRUCK. No; and we call the emergency squad, and the answer is: "This person is not a danger to themselves or anyone else."

Senator SPECTER. Do you have a judgment as to how many homeless there are in the District of Columbia?

Reverend STEINBRUCK. No; that is a speculative thing. I really do not. It depends on how you spell homeless. I personally would include under the number of homeless that family which is just a few dollars away from being evicted. I would say they are homeless. They are in great danger. Others would say that does not fit the category. But I do not think we have begun to really understand the magnitude of homelessness, and the focus in my estimation has been excessive when it comes to individuals, mentally ill, and we are neglecting and overlooking the situation of families.

Senator SPECTER. All right. Thank you very much, Rev. Steinbruck.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

DR. JOHN A. TALBOTT, PRESIDENT, AMERICAN PSYCHIATRIC ASSOCIATION

MITCH SNYDER, COMMUNITY FOR CREATIVE NONVIOLENCE

INTRODUCTION OF PANEL II

Senator SPECTER. I would like to call now Dr. John Talbott, president of the American Psychiatric Association. I would like also to ask Mr. Mitch Snyder to step forward, for the Community for Creative Nonviolence. We are going to hear from everybody before we really start the questioning of the panels.

Judge KESSLER. Senator, may I just make one comment on what Reverend Steinbruck said, since it relates to the legal standards?

Senator SPECTER. All right.

Judge KESSLER. There is a great deal of individual initiative and discretion within the system, before individuals actually get to court. In other words, police officers impact on the system, providers of services do. I cannot believe that, were that case brought to court, it would not fit within the existing standard, which is mental illness and danger to a person.

Many times, cases do not get to the court because individual actors in the system do not understand the standard—and that, of course, I cannot comment on. But I found that particular example a shocking one, and I just simply do not believe that it would not fit within the existing legal standards.

Senator SPECTER. Judge Kessler, that is part of the purpose of this hearing, because I have heard again, and again, and again of such cases where they do not measure up to the court standards. But we are going to explore that.

Dr. Talbott, welcome. We look forward to your testimony.

STATEMENT OF DR. JOHN TALBOTT

Dr. TALBOTT. Thank you, Senator.

My name is John Talbott. I am president of the American Psychiatric Association; also, professor of psychiatry at Cornell and associate medical director of the Payne-Whitney Clinic in New York.

I have a formal statement, which I would like introduced into the record, and I will highlight some of the points in it.

PREPARED STATEMENT

Senator SPECTER. Your full statement will be made a part of the record, and to the extent you can summarize it, we would appreciate it, Dr. Talbott.

Dr. TALBOTT. Thank you.

[The statement follows:]

STATEMENT OF DR. JOHN A. TALBOTT

I am John A. Talbott, M.D., President of the American Psychiatric Association and professor of psychiatry at the Cornell University Medical College and associate medical director of the Payne Whitney Psychiatric Clinic of the New York Hospital in New York City.

The American Psychiatric Association, a medical specialty society representing over 30,000 psychiatrists nationwide, appreciates the opportunity to testify before the Senate Special Committee on Aging to provide our views on the genesis of homelessness including those public policy failures which can be identified as contributory, and our recommendations for new public policy directions in meeting the needs of those myriad of individuals who we have come to refer to simply as "the homeless."

We are particularly proud that the APA has been in the forefront of increasing involvement and concern by the medical profession about this issue. There was a sense of urgency when we formed our Task Force on the Homeless Mentally Ill just over a year ago. The problem was of such magnitude, the plight of the homeless so desperate, that the Task Force was asked to complete its report and recommendations within a year. Charged to gather all the research, data and knowledge available, to prepare a substantive volume containing an up-to-date summary of what is known about the problems of the homeless mentally ill, and to formulate recommendations to deal with these problems, the Task Force met its deadline, and our report -- and I am honored to present you with a copy -- was presented to the public in mid-September. The report contains a series of key public policy recommendations for the management of the population of homeless mentally ill. Such recommendations were based not only upon the expertise of the members of the Task Force, among whom were leading experts in the field, many of whose individual efforts were pioneering ones, but upon the data amassed through a series of site visits to shelters and other programs seeking to serve the needs of the mentally ill homeless across the country.

The recommendations form the basis for the legislative and other Federal, state and local activities which must occur if we are to resolve this problem on a long-term rather than palliative, short-term basis. They also form the basis for a recently agreed-upon collaboration with the American Medical Association to help broaden the base of concern and activity in this regard. It is the work of this Task Force upon which I am drawing in my prepared statement today, and they are the recommendations of this Task Force which I will be proposing in both their generic and somewhat more operational forms later in this presentation.

Before discussing these recommendations, I would like to summarize a number of the major points of the Task Force's study of the homeless mentally ill in

America, because it is only within the context of what we know about this population, that specific, appropriate remedies can be crafted.

Homeless in America is not a new phenomenon.

Colonial documents reveal the existence of wanderers; indeed, almshouses, workhouses and poorhouses were established partly to serve those without adequate housing. More recently, particularly during the Great Depression of the 1930s, vagabonds and hoboes were common in both urban and rural areas. For years, skid-rows have served as a refuge for many of those living on the margins of society -- the so-called derelict or chronic alcoholic.

Today, the rapidly growing problem of the homeless has emerged as a major societal tragedy, commanding increasing attention from all segments of society: the media, government, private organizations and the public at large. The homeless have crept from the skid-rows from the almshouses, from the hidden alleys of the past, to place themselves squarely in front of us: in our parks, on our major streets, indeed, in front of our very homes and places of employment. By some, those affected by homelessness are regarded as a detrimental part of the cityscape, an eyesore to be eliminated, bag ladies and grate gentlemen to be pitied and hurried past. However, by others they are seen as victims of a moral scandal with roots reaching from family, community and caregivers to the highest circles of government.

A marked proportion of the homeless are also chronically mentally ill, characterized by different constellations of needs and responded to differently than others among the homeless. While the media have documented the problems of the homeless in general, until relatively recently, there has been little attention paid to a very special subgroup within this homeless population -- a subgroup whose ranks have been estimated to constitute as much as 50 percent of the homeless -- the homeless mentally ill. Arce and his colleagues, for example, in 1983, determined the prevalence of mental illness among 193 homeless men and women brought to an emergency shelter in this city in December, 1981. A subsample of 179 received psychiatric evaluations, and 40 percent were found to have major mental disorders. The leading primary diagnoses were schizophrenia for more than one third of the cases, and substance abuse for one fourth. Secondary diagnoses of substance abuse were made for an additional 18 percent. Baxter and Hopper's 1981 field study, updated a year later, assessed mental disability and service needs among the homeless on New York City streets. These landmark studies provided vivid descriptions of the homeless population and suggested that as many as half may suffer from serious psychiatric disorders.

While we have all been appalled by the study findings bearing out the surprising numbers of homeless who are characterized as mentally ill, we have, until recently lacked the knowledge of who they are, how ill and disabled they are, what their needs are (in terms of shelter, psychiatric treatment, other medical treatment and social and support services), and what sort of plan or plans can ameliorate their plight on both a short and longer term basis.

When we look at the homeless mentally ill, we are really dealing with two problems with multiple causes and subgroups: homelessness and chronic mental illnesses. Each in and of itself is a formidable challenge to resolve, but combined, they present a problem of unprecedented magnitude and complexity. Neither concept has been well defined for the purposes of research. Neither concept has been well defined for the purpose of rendering public policy decisions regarding their prevalence in the population or how to meet the needs of individuals characterized either as chronically mentally ill or homeless. Neither concept has been well defined for greater ease in integrating persons in either category into exising habilitation, support or medical care networks. As Irene Shifren Levine points out in our Task Force Report: "There are relatively few service programs that have been specifically developed to meet the needs of the homeless mentally ill. In fact, the population bears the cross of a dual disenfranchisement from society and its agents of service delivery: the mentally ill are often excluded from programs designed to serve the homeless, and those who are homeless are typically screened out from receiving services designed for the chronically mentally ill."

Thus, the homeless mentally ill have become our society's "untouchables," unable to advocate for themselves, unable to protect themselves from harm, unable to acquire the bare necessities of living. Of the homeless, they are perhaps the most vulnerable, the most disturbing to the public and the least likely to receive any help. They are a frightening specter of what could become of any one of us, because mental illness is democratic: it knows no economic class, no ethnic or racial background, no gender. Its devastating effects can drain family resources, destroy family cohesion -- can lead the mentally ill away from their homes, from treatment, from the very persons and elements which could help in remission or recovery.

While the incidence of homelessness among the mentally ill has markedly increased over the past three decades, coinciding with the deinstitutionalization movement, deinstitutionalization itself cannot be blamed for the situation, nor was it bad per se. The concept of "asylum" has been with us over myriad years. Refugees have sought asylum on our shores for hundreds of years, seeking a safe haven in which to conduct their lives. Defectors seek asylum from political repression. Asylums were created for the mentally ill for a two-fold purpose: first to protect them from a society in which they did not "fit" and later to protect society from those they had before benignly sought to shelter.

By the mid 1950s, large, often state facilities for the mentally ill -- asylums -- became the focal point of a major shift in public policy. As Richard Lamb, M.D., Chair of the Task Force on the Homeless Mentally Ill pointed out in his chapter of our Report, "When the new psychoactive medications appeard along with a new philosophy of social treatment, the great majority of the chronic psychotic population was left in a state hospital environment that was now clearly unnecessary and even inappropriate for them, though it met many needs... Another powerful motivating force was concern about the civil rights of psychiatric patients (including issues surrounding competency and involuntary commitment)....Not the least of the motivating factors was financial. State governments wished to shift some of the fiscal burden for these patients to federal and local government -- that is, to federal SSI and Medicaid and local law enforcement agencies and emergency health and mental health services."(parentheses added)

This constellation of public policy changes led to the wholesale "deinstitutionalization" of many of the chronically mentally ill. The dimensions of the phenomenon of deinstitutionalization are revealed by the numbers. In 1955, there were 559,000 patients in state hospitals in the United States; today, at any given time, there are approximately 123,000.

Conceptually, deinstitutionalization was not flawed; its implementation was. With the advantage of hindsight, we can see that the era of deinstitutionalization was ushered in with much naivete and many simplistic notions about what would become of the chronically and severely mentally ill. As noted above, the importance of psychoactive medication and a stable source of financial support was perceived, but the importance of developing such fundamental resources as supportive living arrangements was not clearly seen or implemented. The concept of community treatment was much discussed, but there was no clear ideas as to what it should consist of, and the resistance of community mental health centers and other more traditional providers of both treatment and social and environmental support services was not anticipated. Nor was it foreseen how reluctant many states would be to allocate funds for community-based services.

In the state hospitals what treatment and services that did exist were in one place and under one administration. In the community, the situation is very different. Services and treatment are under various administrative jurisdictions and in various locations. Even the mentally healthy have difficulty dealing with the number of bureaucracies, both governmental and private, to have their needs met. Further, patients can easily get lost in the community as compared to the hospital. Imperfectly conceived, deinstitutionalization has led to a situation in which those who have been released from the hospital have fallen between the cracks of the community's social and health service networks. In a sense the refugees from yesterday's locked wards have become the tragedy of the inhabitants of our back alleys. Their asylum -- their safe haven -- has been lost.

Since the time of mass deinstitutionalization in the 1950s and 1960s, however, other individuals, chronically mentally ill, whose histories have been vastly different from those who were deinstitutionalized in the early days of the movement, also have entered the system or non-system of the homeless. They have become the victims of the same absent or if not absent, then cumbersome and labyrinth-like community network, and have not received basic service needs. In the main, this population is younger, more involved with drugs and alcohol, more disruptive, and with a history of short-term, rather than long-term hospitalization, based in part upon commitment law changes brought about at the same time as the deinstitutionalization movement. Their lack of shelter is similar to that of those older homeless mentally ill now inhabiting our streets, but their medical, social and other support service needs are vastly different.

Society's ambivalence about wanting the mentally ill kept out of sight, while at the same time opposing involuntary commitment must be better resolved. Almost immediately after deinstitutionalization occurred, society reacted vehemently to their presence on our cities' streets. Yet society has increasingly rejected the idea of remanding some of these most seriously and chronically ill patients to state hospitals for long periods of time. Currently, few states have commitment laws that give family members or those responsible for treatment easy access to prompt treatment for persons whose mental illness has worsened or whose condition has deteriorated severely. Society cannot afford to have it both ways, particularly when today's hospitals are required to undertake "active treatment" for those still within the walls of such facilities, and the streets, single room occupancy dwellings, and other extent community living arrangements fail to provide any treatment at all. For many of the mentally ill homeless, the community has become the snakepit that was the institution of the past -- absent psychiatric and other medical care, absent adequate sanitation, absent human contact and other social support services.

The emphasis on homelessness or lack of shelter per se has deflected attention from the basic, underlying problem of the lack of a comprehensive support system for the severely and chronically mentally ill. The problems confronting the mentally ill homeless over time have been exacerbated by a number of factors: the failure of psychiatry and other medical professions to know how to address the problem; the reluctance of non-medical social service personnel to work with this population; the victims' own suspiciousness of authority and mental health professonals and their inability or unwillingness to form interpersonal relationships as well as their mental disability; the denial of mental illness as a medical disorder endemic in the homeless population which, as other medical conditions, requires care and treatment; and perhaps most important, the fragmentation of responsibility for the population among a labyrinth of agencies whose funding, administration, and monitoring cut across health, housing and human service agencies, across layers of government and across the public and private sectors, leading to a disorganized nonsystem of service that is highly inconsistent in appropriateness, availability, acceptability and quality.

The APA's Task Force, and the APA itself, have recommended that to address the problems of the homeless mentally ill in America, a "comprehensive and intergrated system of care for this vulnerable population of the mentally ill, with designated responsibility, with accountability and with adequate fiscal resources, must be established." The intent, however, is not to deal solely with those who are now on the streets, but to ensure that such a system of care exists for those whose severe and chronic mental illnesses require treatment which a facility is no longer able to provide as the result of commitment laws which prohibit long-term hospitalization. We must not only establish a program for the homeless, but ensure that we do not fail to meet the needs of those for whom the streets would become their only recourse in the future, absent such services.

Our major recommendation has been broken down into fourteen derivative recommendations. As I discuss each in turn, I hope to provide some operational recommendations which could serve as the basis for legislative action on each. The Committee should bear in mind, however, that these recommendations are in essence, a complete package. A piecemeal approach would only add to the current crazyquilt of programs which exist, but which have failed in their conception and conduct to meet the needs of the homeless mentally ill in the past, today, and, though we have not, in the future.

Any attempt to address the problems of the homeless mentally ill must begin with provisions for meeting their basic needs: food, shelter and clothing. The chronically mentally ill have a right, equal to that of other groups, to these needs being met. Outreach to these individuals is much more difficult, as the result of their illness itself. Self identification of the homeless mentally ill is virtually nonexistent -- they simply do not come forward for help, some out of rear that they will merely be rehospitalized, some out of fears native to their illness itself, some because they do not believe they need help. Just as Congress has required that special emphasis in the Alcohol, Drug Abuse and Mental Health block grants be placed on the chronically mentally ill, just as Congress has placed special emphasis on research into causes of chronic, severe forms of mental illness, just as Congress has placed special emphasis on research into causes of chronic, severe forms of mental illness, just as Congress has emphasized training in the treatment of the chronically mentally ill for physicians and other mental health practitioners, so, too, must Congress create a legislative theme that ensures whatever or whenver legislative basic rights or service are established or provide for the care of the homeless, that such legislation mandate that a priority be effectuated on behalf of the special needs of the homeless mentally ill.

An adequate number and ample range of graded, stepwise, supervised community housing settings must be established. While many of the homeless may benefit from temporary housing such as shelters (a site which is being emphasized, perhaps to the detrement of others, as Federal, state and local governments grapple with the plight of the homeless as winter approaches), and while some small portion of the severely chronically mentally ill are able to graduate to independent living, for the vast majority, neither shelters nor mainstream low-cost housing (such as section 8 or section 202 housing) are appropriate. Most housing settings that require people to manage by themselves are beyond the capabilities of the chronically mentally ill. We need only look to the sorry experience of the mentally ill now housed in many SROs to see just one example. Instead, there must be settings offering different levels of supervision, both more and less intensive, including quarterway and halfway houses, lodges and camps, board and care homes, satellite housing, foster or family care, and crisis or temporary hotels. Organized living arrangements can help stabilize the lives of such individuals to a marked extent. The supervision provided could help ensure that medications are taken, that an address is available for the delivery of SSI, SSDI, Medicare and Medicaid payments, that there is an address available for case workers and health and supportive care providers.

Adequate, comprehensive, and accessible psychiatric and rehabilitative services must be available and must be assertively provided through outreach services when necessary. First, there must be an adequate number of direct psychiatric services, both on the streets and in the housing provided, when appropriate, that provide (a) outreach contact with the mentally ill in the community, (b) psychiatric assessment and evaluation, (c) crisis intervention, including hospitalization, (d) individualized treatment plans, (e) psychotropic medication and other somatic therapies, and (f) psychosocial treatment. A clear model for this sort of service system was established in the 1980 Mental Health Systems Act, PL 98-398, though regrettably, that law was repealed. The Older Americans Act as amended, does contain the model developed for such outreach services for the mentally ill elderly under the MHSA, though the demonstrations provided under the OAA have been extremely limited.

Second, there must be an adequate number of rehabilitative services, providing socialization experiences, training in the skills of everyday living, and social rehabilitation. Programs providing such services could be patterned after day treatment programs, or some of the more social support related servcies provided by senior centers. Third, both treatment and rehabilitative services must be provided assertively -- for instance, by going out to patients' living settings if they do not or cannot come to a centralized program. (This is not dissimilar to some of the homemaker-chore and other home-based health and rehabilitative services provided under programs for the aged, though it is absolutely critical not to underestimate the difficulty of working with many of these patients.)

General medical assessment and care must be available. Since we know that the chronically mentally ill have three times the morbidity and mortality of their counterparts of the same age in the general population, and the homeless even higher rates, the ready availability of general medical care is essential and critical. Again, this could occur within the housing sites, within the rehabilitation programs. It is important to remember that existing medical service reimbursement, through Medicare and Medicaid could become far more readily available to such individuals once a fixed address and appropriate case management of such persons is in place. Moreover, outpatient treatment, whether in centers such as CMHCs or Community Health Centers is far less expensive to all levels of payor (Federal , state and local public sector as well as private payors) than is the traditional mode of care sought by the homeless mentall ill — the emergency room, often as the result of intervention by corrections officials.)

Crisis services must be available and accessible to both the chronically mentally ill homeless and the chronically mentally ill in general. Too often, the homeless mentally ill who are in crisis are ignored because they are presumed, as part of the larger homeless population, to reject all conventional forms of help. Even more inappropriately, they may be put into inpatient hospital units when rapid, specific interventions such as medication or crisis housing would be more effective and less costly. Others may be incarcerated in corrections facilities, even more inappropriate than other settings. Others, in need of acute hospitalization are denied it because of restrictive admission criteria or commitment laws. In any case, it will be difficult to provide adequate crisis services to the homeless mentally ill until they are conceptualized and treated separately from the large numbers of other homeless persons.

A system of responsibility for the chronically mentally ill living in the community must be established, with the goal of ensuring that ultimately each patient has one person responsible for his or her care. Clearly, the shift of psychiatric care from institutional to community settings does not in any way eliminate the need to continue the provision of comprehensive services to the mentally ill. Indeed, the need for asylum for such persons may be even greater when confronted by the larger community setting. As a result, society must declare a public policy of responsibility for the mentally ill who are unable to meet their own needs; governments must designate programs in each region or locality as core agencies responsible and accountable for the care of the chronically mentally living there; and the staff of these agencies must be assigned individual patients for whom they are responsible. The ultimate goal must be to ensure that each chronically mentally ill person in this country has one person -- a case manager, if you will -- who is responsible for his or her treatment and care.

For the more than 50 percent of the chronically ill population living at home or those with positive ongoing relationships with their families, programs such as respite care must be provided to enhance the family's ability to provide a support system. Where the use of family systems is not feasible, the patient must be linked up with a formal community support system.

In any case, the entire burden must not be allowed to fall upon families as if this illness -- as compared to a physical illness -- were their fault and they should be punished.

There are numerous models upon which such a system can be based, the most well defined and recent is that set forth in the Mental Health Systems Act, providing for both services and case management of the population of chronically mentally ill, aged and child mentally ill, in particular. Respite care has its precedence in programs serving the elderly and the terminally ill, as does the integration of family, when available, into the service delivery network. Moreover, these services can draw upon existing individual and categorial financing mechanisms -- Medicare, Medicaid, SSI, SSDI, Title XX funding, etc.

Basic changes must be made in legal and administrative procedures to ensure continuing community care for the chronically mentally ill. In the 1960s and 1970s, more stringent commitment laws and patients rights advocacy remedied some egregious abuses in public hospital care, but at the same time these changes neglected patients' rights to high quality comprehensive outpatient care as well as the rights of families and society. New laws and procedures must be developed to ensure provision of psychiatric care in the community -- that is to guarantee a right to treatment regardless of the setting.

Further, it must become easier to obtain conservatorship status for outpatients who are so gravely disabled and/or have such impaired judgment that they cannot care for themselves in the community without legally sanctioned supervision. Involuntary commitment laws must be made more humane to permit prompt return to active inpatient treatment for patients when acute exacerbations of their illnesses make their lives in the community chaotic and unbearable. Involuntary treatment laws should be revised to allow the option of outpatient civil commitment; in states that already have provisions for such treatment, that mechanism should be more widely used. Finally, advocacy efforts should be focused on the availability of competent care in the community.

Essentially, it is critical to respond both to patients' rights and medical needs, insofar as both inpatient and community based treatment and services are concerned. Congress recognized this need in its statement of findings in Public Law 98-621 (which provided for the transfer of the St. Elizabeth's Hospital to the government of the District of Columbia). The law recognized that new system of care must be responsive to and protect not only "patients rights" but also patients' "medical needs". Moreover, advocates and states can no longer afford simply to close facilities and deinstitionalize the population. They must first ensure that the requisite constellation of service and treatment needs is met, as described in the Mental Health Systems Act. We must ensure not only that those now on the streets become part of this more humane system, but that those now in facilities or in need of community-based care do not become the homeless for lack of managed, available care and treatment.

One facet of the availability of continuing community care for the chronically mentally ill is the availability of federally-supported health insurance coverage for such individuals. Without insurance, whether Medicare or Medicaid, outpatient treatment becomes virtually unobtainable. There are few dollars which would have been utilized at the state facility which follow the patient. Medicare and Medicaid (in most states) have severely curtailed benefits for the treatment of mental illness, in far lesser amounts than needed by the chronically mentally ill. Their pharmaceutical needs -- psychoactive medication in most cases — is expensive and uncovered. Broadened Medicare and Medicaid coverage, as envisioned in legislation you introduced Mr. Chairman, (S.1289 in the 96th Congress), is warranted for all, but certainly for those chronically mentally ill identified in this testimony.

Ongoing asylum and sanctuary should be available for that small proportion of the chronically mentally ill who do not respond to current methods of treatment and rehabilitation. Some patients, even with high-quality treatment and rehabilitation efforts, remain dangerous or gravely disabled. For these patients, there is pressing need for ongoing caring, quality asylum in long-term settings, whether in hospitals or in facilities such as California's locked skilled nursing facilities with special programs for the mentally ill. Again, changes in commitment procedures and laws regarding SNF and ICF coverage for the mentally ill would be required.

A system of coordination among funding sources and implementation agencies must be established. The ultimate objective must be a true system of care rather than a loose network or confederation of services, and an ease of communication among different types of agencies (for example, psychiatric, social, vocational and housing) as well as up and down the governmental ladder from local through federal. We have heard all too often about isolated programs to serve the homeless mentally ill, which are barely surviving financially due to internacine warefare among public and private funding sources over who will not pay for the programs. How one can mandate such cooperation and coordination across levels of government and across agencies (since all too often, administrative costs associated with such coordination themselves drain much of the funding resource available for actual program development) is a matter of legislative legerdemain. It will take your creative legislative abilities to be certain that it happens, if the nationwide problem confronting us all is to be resolved.

General social services must be provided. Such services include escort services to agencies and potential residential placements, help with application to entitlement programs, and assistance in mobilizing the resources of the family. It is possible that the case manager identified earlier could help perform many of these functions, particularly those involving access to the various segments of the service delivery system.

An adequate number of professionals and paraprofessionals must be trained for community care of the chronically mentally ill. While the NIMH clinical training program has fallen into disrepute within the context of this Administration's proposed budgeting, it could, with adequate resources and Congressional direction, develop the manpower necessary to meet the community care needs of the chronically mentally ill. Perhaps volunteer agencies such as VISTA and others, could also be trained to perform some of the outreach and case management functions which do not require trained medical professionals.

Research into the causes and treatment of both chronic mental illness and homelessness needs to be expanded. While our knowledge has greately advanced in recent years, it is still limited. Our understanding of, for example, differential therapeutics -- that is, what treatment works for which patients in what settings — is in its infancy and required increased resources and attention. The ADAMHA research programs have made some efforts in these directions, but clearly need greater financial resource commitment to do more, just as greater resources are needed for brain research into the causes of mental illness.

More accurate epidemiological data need to be gathered and analyzed. the homeless mentally ill. Each of the recommendations cited above will engender some expenditure of funds -- whether Federal, state or local. The problem exists at each of these levels -- inadequate Federal health insurance funding for the treatment of the homeless mentally ill, inadequate state and local follow-up of those deinstitutionalized to ensure placement due to lack of personnel, insufficient housing to meet the shelter needs of these persons, insufficient effort at each level to identify the benefits to which such persons may be entitled and to seek means of ensuring they can receive such benefits.

Clearly, to solve the problems of the homeless in general and the homeless mentally ill in particular will require a great deal of resource commitment. Perhaps some can be generated through the private sector, but in the main, we suspect it will have to come from government entities. Based on what we have seen to date, the homeless mentally ill are trapped in a cross-fire of allegations from one level of government to another as to whose responsibility the homeless are; they are trapped in the cross-fire of those advocating deinstitutionalization on the one hand, and those urging greater attention to medical needs on the other (ironically, not necessarily opposing points of view). Without direction from the Federal government, without impetus for changes in housing, health care (including insurance coverage), rehabilitation, and social support networks, the mentally ill homeless will remain the untouchables unable to live outside our society because there are no services, and unhelped within our society because of fear, misunderstanding, and lack of commitment.

The American Psychiatric Association would like to work with you, Mr. Chairman, and your committee, to help craft a meaningful, long-term solution to the problems confronted by the mentally ill homeless and other homeless persons across our nation. We have seen our joint efforts come to fruition in the past -- in the passage after almost three years of omnibus Social Security Disability insurance legislation -- and know that our mutual commitment to meeting the needs of yet another population too ill, too disenfranchised, too voiceless to help itself, will not fail.

RECOMMENDATIONS OF THE AMERICAN PSYCHIATRIC ASSOCIATION

Dr. Talbott. The American Psychiatric Association represents 30,000 psychiatrists nationwide, and we have undertaken a study of the problem of the homeless mentally ill over the past year, summarizing all of the research data and findings, and I would be glad to give you a copy of this as we leave, Senator; I believe your staff has already had access to it.

Our recommendations, which we released in September, were rather comprehensive and complex, and I will try to highlight some of the major points we made in our task force study.

First of all, homelessness in America is certainly not new. But what is new are the percentage and numbers of the severely mentally ill who are part of that population. There is a great deal of dispute, as you have already heard today, about the numbers, and even the percentage of severely mentally ill is in question—it varies anywhere from 30 to 50 percent of the population.

These are not minor illnesses. A third of these people have schizophrenia, a very serious mental condition, and another quarter have substance abuse, which is very serious.

The problem of deinstitutionalization and its role in the homeless mentally ill is also a complex one. Conceptually, deinstitutionalization itself was not a bad idea, but its implementation throughout this country has been severely flawed. It is conducted with much naivete, and the financial support to providing a full array of community services and settings simply was not in place when the movement began.

In the State hospital, whether bad or good, in the old days, at least all services were under one umbrella. When patients moved out into the community, that umbrella did not move with them.

Another important point has been highlighted by your hearing and by the other persons speaking already. Society has an ambivalence about wanting the mentally ill kept out of sight, while at the same time opposing involuntary commitment, and that conflict has to be resolved. Currently, few States, only five or six of them, have the sort of outpatient commitment statutes that we feel would give family members and patients ready access to services which they need, before they deteriorate even more seriously.

The emphasis on homelessness per se really deflects from the basic underlying problem of the lack of a comprehensive care and support system for the mentally ill homeless, and we are concerned about that, because as was pointed out, these are different populations with different needs, and therefore different interventions are required.

We came up with 14 recommendations, which again are encompassed in the testimony that I have submitted. Let me highlight some of those.

BASIC NEEDS OF THE MENTALLY ILL HOMELESS

Certainly, we are aware that we need to have provision for the basic needs that the mentally ill homeless have. But, in addition, they need a series of graded, stepwise, supervised—and I would underline supervised—housing settings. Many people cannot manage by themselves, and need some form of supervision. Different people need different levels of supervision.

While psychiatric and rehabilitative services are needed, outreach services are equally needed. General medical care is needed, as you have just heard. These people have three times the incidence of medical morbidity and mortality as their age peers.

Crisis services are another needed service.

In the State hospital, in the hospital, responsibility was fixed for care. In moving patients out, that responsibility has essentially been lost; it has been lost for individual patients, and it has been lost for the population at-large. We feel very strongly that that sort of responsibility has to be—there has to be a recommitment to that sort of responsibility.

There are numerous models throughout the country. All are small. All are inadequate in meeting the total need. But they provide some guidelines for future action.

CHANGES NEEDED IN LEGAL AND ADMINISTRATIVE PROCEDURES

We also feel that there need to be some changes in the legal and administrative procedures in four separate areas: (1) In ease of conservatorship status for outpatients who are so gravely disabled that they cannot care for themselves; (2) involuntary commitment laws to be made more humane; (3) utilization——

Senator SPECTER. Dr. Talbott, you started with conservatorship status?

Dr. TALBOTT. Conservatorship status for those who are so gravely disabled, or have impaired judgment, that they cannot care for themselves.

Senator SPECTER. Who is going to be the conservator under your proposal?

Dr. TALBOTT. Well, different States have different ways of ensuring that conservatorship, primarily for the elderly. That sort of concept could be expanded to the gravely disabled who are not necessarily elderly.

Senator SPECTER. Who function as the conservators?

Dr. TALBOTT. Oftentimes, members of agencies, community agencies, in the area.

Senator SPECTER. All right. That is category one.

Dr. TALBOTT. Obviously, the best person to be responsible is a family member, if they are available. Oftentimes, the severely mentally ill do not have access or——

Senator SPECTER. When you talk about a conservatorship status, you are really talking about somebody like a guardian; that is another word for a guardian.

Dr. TALBOTT. Indeed, exactly.

The second area has to do with involuntary commitment——

Senator SPECTER. When you talk about a guardian, you are talking about a court appointment in a specific situation.

Dr. TALBOTT. Yes.

Senator SPECTER. What is category two?

Dr. TALBOTT. Category two would be involuntary commitment laws that permit easier and more human return to active inpatient treatment when acute exacerbations occur.

The third is——

Senator SPECTER. And what standard do you recommend on that?

Dr. TALBOTT. Well, I think that grave disability needs to be reintroduced as a concept in addition to the acute and immediate harm to self or others. Most States focus on an almost inevitable immediate harm to self or others, that one has to be——

Senator SPECTER. Two-thirds of the States have the standard of immediate harm to self or others.

Dr. TALBOTT. And some States are now beginning to move in the direction of grave disability, which I think would permit the sort of easier access to services that people deserve.

GRAVE DISABILITY

Senator SPECTER. And how would you define grave disability?

Dr. TALBOTT. Well, when someone is eating out of a garbage can, when someone is unable to get off the street when it is 20 below zero, when someone is unable to go from A to B to C, I think you can make those sorts of determinations. There is not a strict, at this point, written set of guidelines. Some States are now beginning, though, to move toward a narrowing of the disability idea and the grave disability concept.

The third is utilization of outpatient civil commitment. A great number of persons do not need to be inpatients, and we have learned from research over the years and controlled studies that most of the chronic mentally ill are as well, if not better served, in outpatient and community settings. I am in no way calling for a return to the old State hospitals, but having a commitment to treatment, which would be outpatient in many, many cases, is something that also either is not in place in most States, or when it is in law, it is not utilized.

The fourth area has to do with advocacy, legal advocacy for the availability of competent care in the community. Advocacy efforts have tended to focus on the right to treatment in hospital, rather than the right to treatment in the community. And with deinstitutionalization, clearly, that right has to be transferred to where people are.

ASYLUM OR SANCTUARY CONCEPT

Another important concept, Senator, has to do with some form of ongoing asylum or sanctuary. It is a very small number of persons who will need that—maybe 2, 3 percent of the chronic mentally ill population in this country. But we have no provision now, when the State hospital has moved away from the role of custody care and of asylum, of ensuring that or of funding it. There just is no way of delivering it anymore in this country.

Senator SPECTER. I do not follow you on that last category. You are talking about asylum care——

Dr. TALBOTT. Forty years ago, people tended to go into State hospitals, where a great number of them stayed for long periods of time, long, long periods of time. That is no longer the case. For the most part, people are admitted to hospitals, and are back out again in a fairly short period of time. Some people cannot manage on the outside. Again, it is a very small percentage, and I am not saying that that is for the majority, by any means.

Senator SPECTER. Are you saying that they are mentally ill people?

Dr. TALBOTT. They are mentally ill people. They are mentally ill people—severely.

Senator SPECTER. And you are talking about asylums or commitments.

Dr. TALBOTT. I am talking about asylum as a concept, not as a red brick building with State employees, 50 miles outside of the major city.

Senator SPECTER. What kind of building are you talking about?

Dr. TALBOTT. Well, they could be community buildings. They could be small facilities. California is experimenting with very small community facilities, with good staffing, to provide that sort of secure place for people who cannot manage, who are too vulnerable to the stresses of modern urban society.

Senator SPECTER. That really ties into your points two and three, doesn't it—well, the outpatient setting is what you are suggesting.

Dr. TALBOTT. Or at least, moving away—it does not have to be institutional in the same way we have seen it for so many years. I see asylum as being akin to the idea of political asylum, rather than being akin to the idea of those red brick buildings, which used to exist so far away from society.

NEED FOR ADDITIONAL FUNDING

The last point I wish to make has to do with the funding. Clearly, these recommendations will not come to pass without additional funding.

To some extent, a whole host of both professional and administrative authorities were naive in 1955 in predicting what would happen with deinstitutionalization, and the additional funds necessary to provide the community settings and services were not in place. That cannot continue to happen.

If we are to move to community care, we have to provide sufficient funding to really do that. And that funding has to come from Federal, State, and local levels.

Senator SPECTER. What is the total amount of funding necessary on the national level, Dr. Talbott?

Dr. TALBOTT. We could come up with a figure for you, but it is not an inconsiderable amount. It is a good deal——

Senator SPECTER. Can you give me a range?

Dr. TALBOTT. No; I cannot give you a range. But we could try to come up with that.

Senator SPECTER. We would be interested to know that.

Dr. TALBOTT. I can tell you that those studies that have looked at the amount of money necessary for good community care have estimated that in 1978 dollars, it would be about $7,200 in Midwestern States. That clearly, with the inflationary factor, and in the Eastern urban areas, would be much greater.

Senator SPECTER. I do not follow your figure. What is your figure?

Dr. TALBOTT. $7,200 a year per patient. But that is a 1978 figure.

Senator SPECTER. How many people are there in that category nationally, in your judgment?

Dr. TALBOTT. The estimate of the chronic mentally ill in the country, at its narrowest, is 1.7 million.

Senator SPECTER. If you would give us a figure, we would appreciate it, Dr. Talbott. We admire the work that your group has been doing. Mr. Jay Cutler, the executive director of your group, has been very helpful to us in quite a number of projects.

Dr. TALBOTT. Thank you, Senator. We would be glad to continue to work with you and your staff on designing a more humane form of care for probably the neediest group of American citizens we have.

Senator SPECTER. Thank you. Thank you very much.

I would like now to turn to Mr. Mitch Snyder, Community for Creative Nonviolence.

Welcome, Mr. Snyder. You were with us 2 years ago, when we discussed the problems of the homeless, and you have been very active in it in the intervening time. We are very much interested in your views as to how we ought to respond to the problem of the homeless at the present time.

STATEMENT OF MITCH SNYDER

Mr. SNYDER. I appreciate your invitation again, Senator, and what obviously is concern. I would assume that you are conducting the second set of hearings as a reflection of the fact that you do care. And I think that there are a lot of folks that care. I do not think that, of and by itself, means a great deal to someone who is outside freezing to death, but I think it is a good thing.

Let me first translate into reality a little bit of what you have heard today.

When a police officer encounters someone whose behavior is bizarre, they bring them to our shelter. They do not bring them to the hospital, they do not begin to process them, because they know that absolutely nothing is going to happen to those people except that they will be shuffled back outside. If and when they commit criminal acts—usually destruction of property, which is a way of crying out and saying, "Help me. I am falling apart. I am suffering"—then they fall under the purview of the criminal justice system, where they will spend weeks, if not months, in the District jail, howling at the top of their lungs like animals in cells—because I have been there, and I know. I have listened to them, like trapped animals, waiting for a bed in St. E's.

POLICY AT ST. ELIZABETHS

In St. Elizabeths, the policy is almost exclusively to send people to the streets. The staff has managed to convince itself that that is not the case. I remember a couple of years back, talking to a social worker who had on her caseload a man named Tim, who lived on our front steps. He was lice-infested. For 2 years, he spent his nights there. We would bring his blankets out in a plastic bag, so that he would not infest the rest of the building. Tim finally jumped off the Key Bridge. He was listed by the caseworker as living at 1345 Euclid Street, being a member of the Community for Creative Nonviolence, and working. That was an absolute absurdity and bore no relationship to reality. That caseworker had never looked.

We have a building with about 800 people in it per night, which is more than one-half of the single, homeless men and women housed in Washington right now. I live there. Eighty to ninety percent of the women—and we have over 100 a night—are mentally disabled; they have passed through St. E's, and they have found virtually nothing there but a swinging door. Thirty to fifty percent of the men—and we have 700 to 800 per night—are equally mentally disabled. They stand on the steps every night, and I watch people walk in and out of that building who cannot tie their own shoes without assistance, while we continue to talk about "them" and provide them with, in fact, very little that will allow them to continue to survive.

HYPOTHERMIA TREATMENT CENTER

The hypothermia treatment center—that is a nice thing on paper. I got a call from the Deputy Chief of Police for the Third District, who said, "What are we going to do? A couple of our guys found someone who was obviously hypothermic." They brought him to the Blair School, where they are supposed to deal with hypothermia. The staff there was so unsure of what to do that we finally threw him back in the wagon, took him to D.C. General, where it took an hour and a half to save the man's life. He almost died. They did not know what to do with him there.

When people call us up and say, "We see somebody who is underdressed; they look like they are freezing. Can you do something about it?" and we say, "Well, here is the number that you are supposed to call; call them up, and if the person is still there in an hour, and you get no satisfaction, call us back"—almost everyone calls us back. And we wind up running out, trying to scrape people up off the concrete before they freeze to death.

That is the reality. The reality is that all the stuff on paper is absolute nonsense. It does not work. It is not there. It makes it easier for people to go to bed at night comfortably, under their warm blankets, with a roof over their heads, and believe that everything is really not so bad, when in fact, everything is terrible.

There are thousands of people in Washington, DC, who are living on the streets, not by choice, but because nobody cares enough to do what needs to be done to bring them inside, not least of all, this Congress which, as far as I am concerned, is waist-high in blood and shame. Thirty-three million dollars, I have been told, has really been spent on the Inauguration, which is more than one-half of what was allocated for America's homeless, millions of human beings, many of whom—according to the APA, maybe a million or more—are mentally disabled. That means they are like children.

INADEQUATE, INACCESSIBLE, INHUMANE SHELTERS

Why do we spend time talking about what we need to do to drag them back inside and to force them to go into places that are inadequate, that are inaccessible, that are inhumane, that you would not spend 10 minutes in, not if you were in your right or your wrong mind.

I am outraged that people like the Philadelphia mayor, Mr. Goode, would start demanding that people be dragged inside—to what? There has never been adequate shelter in Philadelphia, nor will there be until people start creating facilities that invite people to come in, and that do not just exist on paper.

I have been to the city shelter in Philadelphia. It is a rathole. Nobody in their right or wrong mind would go in there unless the conditions outside were so atrocious that they had no choice.

Senator SPECTER. Are you talking about the one on Arch Street?

Mr. SNYDER. Yes; that is not a pretty or a nice place. People do not like it.

Senator SPECTER. Well, it is not a "pretty or a nice place," but it is not a rathole.

Mr. SNYDER. It depends on your definition of the term. I will compare it to the homes of any Congress member, and let us see how it shapes up—or anyone else who is living fairly well.

Senator SPECTER. I am not saying it is up to standards of where members of Congress live, Georgetown residences, or Capitol Hill residences. But I have been to the shelter on Arch Street, and it is warm, and it is dry, and there are beds, and there is food. It is not ideal, but it is not a rathole, Mr. Snyder.

Mr. SNYDER. It is a brutal, violent place that is so bad that some of the men who stayed there got themselves out of there and made their own shelter, because they could not stand to live there anymore. It is violent. It is understaffed. The place is not a nice place to be. It is full. It is full, because it beats the streets. You are right; it is better than nothing. We would never suggest that it should not be there. But there is not enough space in Philadelphia. It is not offered in a way that is conducive to the respect of human dignity that will allow people to come inside. So to then say we have got to drag them in does not make sense.

Senator SPECTER. I would agree with you that there needs to be more space. But I did not come here to defend Mayor Goode. But the space on Arch Street is a start.

2ND AND D STREETS FACILITY

Let me ask you about the facility at 2nd and D Streets, which you and I worked to get established, which was a product of what came out of our last hearings; at least something was done, where there are some 700 people accommodated. What is your evaluation of that facility?

Mr. SNYDER. Well, that is truly a rathole. That is why some of us had to fast to the point of death, or near-death, to try and get a commitment from the administration to turn it into a place fit for human habitation.

Senator SPECTER. And how is it now?

Mr. SNYDER. It is still a rathole. I mean, the rehabilitation has not been done. The temperature was so low in that building the other night that Secretary Heckler had to do us a favor and get blankets shipped in at 4 o'clock in the morning. The women's section was 40 degrees. We had over 100 women in there, many of them huddled under piles of clothing, because we did not have enough blankets to go around.

We have right now, after GSA has spent the last month and a half—mostly on lunch breaks, I must say—in our building, we still have only one toilet that is functioning for every couple of hundred people. We still have four showers for every 700 to 800 men. We still have holes in the walls. There are dozens of rooms where water is running through the roof.

Now, I understand why that is—because the renovation has not been done. But that shelter in many ways represents the physical condition of many shelters in this city and across the country. They are afterthoughts. They are previously fire buildings, they are previously schools, they are previously universities, they are previously something. But they have never been turned into facilities that seriously express a commitment on the part of anyone to help folks get off the streets.

People are not out there by choice. I have never met a human being who likes freezing. I have never met a person, whether mentally disabled or not, who likes being rained on or snowed on, who likes frostbite or pneumonia, who likes to get bronchitis weekly. I have never met people who truly like feeling that way.

PROBLEM OF HOMELESS IS A NATIONAL EMERGENCY

The problem is that we do not have the options available; that we spend a great deal of time meeting and talking and preparing pieces of paper, when in fact, what we need to do is act as though there is a national emergency, because in fact, there is a national emergency.

What does it say about us as a people, the wealthiest nation the world has ever seen, to have a million human beings whose only crime is to talk to themselves or to trees or to God, eating out of garbage pails, freezing to death at a frightening rate, living in a way that is completely unconscionable, in a country that has the resources instantly to scrape them off those streets and to allow them to come inside—not to force them to go into one institution, or into another, not to institutionalize and lock them up or move them against their will—but has the resources to truly welcome them back into the human community, and instead talks, ad nauseum, about the problem, rather than truly rolling up their sleeves to bring them inside. The moment we do that, the moment we seriously want those folks to rejoin us as a human community and are willing to expend the energy and the resources, and to show them that we care enough about them as human beings, to bring them inside to places that show that we respect them as people, and that we have some concern for their dignity and their personhood, as well as their lives, they will flock inside at a rate that will shock all of us.

Senator SPECTER. There are two major subjects that I want to take up with the panel at this time.

One is the resources which would have to be committed nationally to solve this problem, and second, the issue of legal standards for commitment, and what is constitutional, and what can be done with people who express themselves as not wanting to be committed.

RESOURCES NECESSARY

Let us take up the first question as to resources necessary. Mr. Snyder, do you have an estimate for the District of Columbia as to how many homeless people there are?

Mr. SNYDER. The estimate that virtually everyone uses is somewhere between 5,000 and 15,000 people, with the predicate that no one, absolutely no one, knows with any degree of certainty how many people there are. We do know that there are thousands of people. We know that there are more people than there are beds. But we have created a situation where people are forced to disappear for their survival—not just to avoid being harassed, and assaulted or abused, but in order to survive the days and nights. You cannot lie outside, where you are highly visible, when it is a wind chill of 37 degrees below zero.

People are in abandoned buildings, they are in abandoned cars, they are in alleyways, they are in every nook and cranny that makes them hard to see, hard to count, and hard to find. But there are thousands, we know that, and there are more people than there are beds, which is why they are continuing to freeze to death. Four people have frozen to death in the District of Columbia as a result of hypothermia and homelessness this winter, and we have not yet had a winter.

Senator SPECTER. Dr. Talbott, you estimate 1.7 million currently disabled.

Dr. TALBOTT. Chronic mentally disabled in the country, yes, with continuing severe disability.

Senator SPECTER. And those people would be likely to be in the homeless category?

Dr. TALBOTT. No; that is the pool who are vulnerable and who are at risk, essentially.

Senator SPECTER. Well, if they are not committed, they are likely to be in a homeless category?

Dr. TALBOTT. No; a good percentage of them, probably 65 percent or so, are still with families or others. Many are in substandard homes. In cities like New York, with gentrification of many neighborhoods, though, the low-cost housing options have disappeared.

Senator SPECTER. I am trying to get some handle as to how many homeless there are in the country.

Dr. TALBOTT. Well, as I think everyone on the panel has said, it is very difficult to estimate, and we really do not know. We have ballpark figures that go anywhere in the country, from 250,000 up to 3 million. And again, that is speculation on both ends. It is an estimate.

Senator SPECTER. If there are 250,000 at $7,000 per person, you are talking about a $1,750,000,000 figure; if you are talking about 3 million, or eight times that, you are talking about something in the $20 billion category to address this problem.

Mr. SNYDER. Actually, according to the HUD study—the only part of it that is even worth reading—the estimate of the cost per night for shelter across the country is $20. We estimate, therefore, that basic overnight shelter could be provided for the 2 million or more people that are on the streets for somewhere between $10 and $15 billion, and that is without the full range of services that are needed, but that would be getting them inside—at those prices, which are pretty high.

Senator SPECTER. Your figure should be close. Twenty dollars a day would be right at the $7,000-a-year figure which Dr. Talbott is talking about. So you are really talking about something in the range of $15 billion a year that would have to be provided by a variety of contributors, at Federal, State, and local levels.

Dr. TALBOTT. But as many people have pointed out, Senator, the short-term solution is actually as expensive as the longer-term one. If you make a longer term commitment to good, low-cost housing and the services, rather than the stopgap shelter approach, it actually is not that much more expensive. It is a capital investment that will pay off over time.

Senator SPECTER. How much more expensive?

Dr. TALBOTT. I am not an economist. I cannot give you that.

Mr. RIVERS. Senator, also, we are talking about a little more than housing. We are talking about a treatment program in addition to housing costs.

One of the things we are doing in the District right now is to look at a redesign of the single unified system, and obviously, the design of that system would determine what the cost would be. But I think——

Senator SPECTER. Do you have a figure for what it would cost in the city?

Mr. RIVERS. No, Senator, we do not yet, because we have not completed the design of the system yet.

Senator SPECTER. Well, Mr. Rivers, I would appreciate it if you would direct your attention to that so that when we have our later hearings on this Subcommittee for Appropriations, you can come back with a figure.

Mr. RIVERS. Senator, we will.

Senator SPECTER. You might want a chance to reply to what Mr. Snyder has said about the inadequacy of the city response to the homeless; if you do, you are welcome to it now.

Mr. RIVERS. The question is——

CITY'S RESPONSE TO HOMELESS PROBLEM

Senator SPECTER. The question is how do you respond to what Mr. Snyder has characterized as the inadequate response by the city government of the District of Columbia to the problem of the homeless?

Mr. RIVERS. Well, first, I work very closely with Mitch. We had a situation a week ago where Mitch wanted some emergency response from the police, and I think I was able to coordinate a meeting with police, fire, and everybody, to raise some of the concerns that Mitch was concerned about.

So, to my way of thinking, I think the city has been responsive to the needs of the homeless. Right now, we are looking for additional facilities that we can open that will provide services. We opened a facility a week ago. Right now, we have an additional 50 beds for homeless people. So I think that the facility is——

Senator SPECTER. You opened a facility a week ago for 50 additional people?

Mr. RIVERS. Yes.

Senator SPECTER. Mr. Snyder, what is your evaluation of that facility?

Mr. SNYDER. Well, we asked the city to open that facility. It is in a bilingual area where there is a large concentration of Spanish-speaking homeless people, and there was a need for it. There was a shelter there last winter, and until last week, there was no shelter there this winter.

Every bed that comes into existence, we are grateful for, because it means one less person has to sleep outside, and one less body has to be claimed by us at the morgue.

And I like David Rivers; I think he is a nice fellow. He sent me flowers when I was in the hospital. As a person, I love him. He is a great guy. But that has nothing to do with the fact that the response of the District of Columbia is painfully and probably criminally inadequate. In any sane and rational society, any local government that allowed people to eat out of garbage pails and sleep on the streets, knowing—knowing full well—that there were more people than there were beds, could not hold its head up, and could not call itself civilized or humane. But I do not want to suggest that the District of Columbia is, in fact, any different than any other district, any other city, any other State, or the Federal Government. There is absolutely nobody in this society, no sector, no group, no organization, no structure, that is responding adequately to the problem of homelessness, which is why we are now having the sixth hearing in the last 3 years in Congress on the issue. And the numbers are higher today than they were when the first hearing was held back in 1982.

OBJECTION TO GOVERNMENT FUNDING

Senator SPECTER. Mr. Snyder, on the subject of funding, you and I had a curious exchange 2 years ago when we discussed this matter. I am reminded of it substantially by the printed record, but let me read it to you. On the question of funding, you had raised an objection to being funded by the Government.

I said to you:

> How are you funded, Mr. Snyder?

You responded:

> Small donations. We would not accept Government money if it came in a brown bag in the middle of the night. We do not pursue or attempt foundation money. We are not interested in anything that requires development of bureaucracies as the price of its acceptance.

Mr. SNYDER. Yes; I would say exactly the same thing today.

Senator SPECTER. Would you say the same thing?

Mr. SNYDER. Yes.

Senator SPECTER. How does that square with your request that the Government assume its appropriate responsibility on this subject?

Mr. SNYDER. One of the reasons it took so long to work out the arrangements for the Federal City College building is because we said to the Federal Government, to the administration, We want you to fix up the building. We want you to make it a model shelter, because a building of 189,000 square feet that is falling apart is of no use to a grassroots group like ourselves—which is doing good work, you know we are doing good work, you acknowledge that—but we do not have the resources to fix up a building like that. But we will allow you virtually no control inside that building, because everything you touch turns to mush. Everything you touch turns to an institution, turns to a prison, turns to something that will drive out the folks that we need most to bring inside.

And so, we will not and do not accept Government funding, nor do we accept Government control. We are not going to become a mirror image of that which has gotten us into this mess. We are still not tax exempt; we are not 501(c)(3); we will never be. We still get by on small donations. We are $40,000 in debt. It costs us $10,000 per month to run that shelter, half of that, our electric bill. It costs us 40 cents per day per person, and it will cost us no more when that building is rehabilitated, and then inside that building, there will be a medical center, there will be a dental clinic, there will be mental health services, there will be job counseling and a nonprofit employment agency, there will be housing counseling. There will be a full range of services which no one will be paid for providing, because we do not believe that people should be paid for doing those kinds of things in that kind of setting, and our costs will still be somewhere between 38 and 40 cents per person per night, and it will remain that way because we will not accept Government funds, we will not create bureaucracies or institutions that push paper instead of caring for people. And our position has changed not at all—our debts have grown, but that is about it.

LEGALITY OF DETENTION

Senator SPECTER. Let me now shift away from the subject of resources—and I do want to pursue that both on the city level, Mr. Rivers, and on the national level, Dr. Talbott, as to what we are looking for, and if you have some suggestion on that, Mr. Snyder, I would be pleased to hear from you as well.

Now let me move to the subject of the legality of detention. We had discussed briefly so far this morning with Dr. Talbott the standard as to what is generally the rule of law that mental illness is defined as someone who is likely to injure himself or others if not committed, and the recommendation has been made by the Psychiatric Association to shift to a standard of gravely disabled, which means unable to care for himself or herself.

Now, part of the constitutional background is the difficulty of confining people under any definition of mental illness. And the Supreme Court said in *O'Connor* v. *Donaldson* in 1975, that:

> . . . a finding of mental illness alone cannot justify the state's locking a person up against his will and keeping him indefinitely in simple custodial confinement. Assuming that term can be given a reasonably precise content, and that the mentally ill can be identified with reasonable accuracy, there is still no constitutional basis for confining such persons involuntarily if they are dangerous to no one and can live safely in freedom.

Now, that brings us to a threshold question, Dr. Talbott, as to whether you can have any confinement, even in homes, under less restrictive circumstances if the person is not dangerous to himself or someone else.

I am sure you have wrestled with this in the Psychiatric Association. What is your thought on the subject?

Dr. TALBOTT. Let me make several comments. I think that for the majority of people, that certainly is the case. The fact that several States have moved to what is called the third standard, that of grave disability, since that was written, is an indication that society in those States, the citizens of those States, feel that the two standards are not sufficient for the protection of the people who live in those States. So I think that there has been a shift in thinking already since the *Donaldson* decision.

Senator SPECTER. They may change the law, but if it is unconstitutional, the statutory change will not stand up.

Dr. TALBOTT. It has not been found to be unconstitutional so far. Let me also say that we have just issued a model commitment law which is now under discussion in various legal and psychiatric circles, and being written about, and that should, I think, provide much food for thought in the next period of time.

In addition, we have just embarked upon an effort, along with the New York City HRA agency, to begin to survey the outpatient commitment situation nationwide and to perhaps come up with some national guidelines in that light. These are both areas that need better definition and much more thinking.

Senator SPECTER. When we talked earlier about a case where a woman was on the floor with cockroaches walking over her, and Judge Kessler said that it was her legal judgment that that kind of a person—I believe you said would qualify for commitment, Judge Kessler—so that that person is a danger to herself, it is a matter of interpretation.

Judge Kessler, how much difference do you think there would be if we used the gravely disabled test as opposed to the test of potentially dangerous to himself, herself, or others?

Judge KESSLER. I think probably a few more people would come into the D.C. mental health system, into the commitment system.

I am not convinced that that many more individuals, that higher a number of individuals, would be processed through the system.

I think that because so many people do not understand what the system could encompass, a lot of people are not even brought into the court system initially.

That is No. 1. And No. 2, I think that that term "dangerous to oneself" clearly covers a whole range of individuals who, under dire circumstances, refuse to get any medical aid at all. Of course, you do have to find mental illness first. And I am assuming that the person who was described as refusing to get any medical aid and was lying on the floor was mentally ill to begin with.

I do not think in the District of Columbia that the numbers would change that substantially, and I do think that there are some countervailing concerns that have to be addressed about changing the standard.

LIBERALIZING COMMITMENT STANDARDS

Senator SPECTER. Dr. Prescott, if you changed the standards, and if you did liberalize the commitment process, would St. Elizabeths be in a position to handle a significant increase in people?

Dr. PRESCOTT. Well, I think the question is whether or not there really would be a significant increase of people admitted to the hospital if you did liberalize the standards. And let me break my response to your question down into two parts, if you will.

First of all, the Department of Health and Human Services does not have an official position yet on the question of the liberalization of commitment laws, although they are studying that. They are waiting for a recommendation of the Consortium of State Courts to make a recommendation to them.

But I personally, as an oldtime practicing psychiatrist who spend many hours making those kinds of decisions, feel that I personally would like to see some liberalization of the commitment laws——

Senator SPECTER. And if so, would St. Elizabeths be in a position to handle that?

Dr. PRESCOTT. Well, that is—yes, sir. We would be able to handle whatever the task was that was going to be required of us, sir.

Senator SPECTER. Well, would you? What is your capacity? How many people do you care for now, and how many more could you care for?

Dr. PRESCOTT. We have about 1,700 beds at the hospital, and the census runs between 1,550 and 1,650 occupants of those beds at any given time.

Senator SPECTER. So you do not have a whole lot of space?

Dr. PRESCOTT. No; we do not.

FACILITY CARE OFF THE GROUNDS OF ST. ELIZABETHS

Senator SPECTER. And if you were called upon to have care in outlying areas, less restrictive circumstances, care in a home setting on an integrated health program, would St. Elizabeths be able to accommodate to that?

Dr. PRESCOTT. Let me see if I understand your question. You are talking about facilities for patient care off the grounds of St. Elizabeths Hospital?

Senator SPECTER. Yes.

Dr. PRESCOTT. Well, we are just now, in cooperation with the District of Columbia, attempting to define a new system in which we will both have decisionmaking powers—the new system will have decisionmaking powers—concerning where people will go in this new system.

Currently, as I am sure you are well aware, the Federal system operates St. Elizabeths Hospital, the District of Columbia operates those activities, with rare exception, off the grounds of St. Elizabeths Hospital, and it requires cooperation between the two governments. After October 1, 1987, when the District is responsible for the overall administration of the combined program, then hopefully by that time there will be additional facilities for patient care off the grounds of St. Elizabeths Hospital, and those decisions will be easier made, and those facilities will be more readily available.

Senator SPECTER. What kind of resources are you looking toward? What kind of facilities off the grounds of St. Elizabeths would you expect to have?

Dr. PRESCOTT. The legislation recently passed this summer mandates a community-based comprehensive mental health care delivery system for the District of Columbia, which would include resources from existing St. Elizabeths Hospital and the existing Mental Health Systems Administration of the District.

The plan for the implementation of this law is in its very embryonic state at the moment of being developed, and early conversations are taking place at the moment concerning what kinds of residential facilities, for example, are going to be needed in the District of Columbia, where they will be located, the kinds of staffing patterns that will be necessary. But what we are looking at is the whole range of services, attempting to capitalize on the situations that have developed over the last 20 years in other jurisdictions and make the best possible system out of this, sir.

CONSEQUENCE OF DEFINITION CHANGES

Senator SPECTER. Dr. Talbott, if we made the change in the definition to gravely disabled as opposed to injury to oneself, what do you think would be the consequence in terms of commitments or additional burdens on the mental health facilities of a city like Washington, DC?

Dr. TALBOTT. I should say that I speak as someone who did run a State hospital at one point, as well as a community mental health center, so I think that, while I am in neither setting right now, I can maybe speak more frankly than other people can. I think it would put a severe strain on those facilities. I think the one danger in our pointing out the severity of this problem is the call for reinstitutionalization and rebuilding a huge network of State hospitals again. I think we need to go in the direction that you are indicating for community residences, community facilities, and not back to that centralized, huge mass warehouse type of thing. I think it would put a severe strain on most of the public mental health systems in this country. I think that strain, though, has to be backed up with resources and I think that has to be met.

Senator SPECTER. I think you have to move to the community setting if you are going to do so not only in a humanitarian but in a constitutional sense. You simply cannot go back to the commitments and the old kinds of institutions and asylums.

Dr. TALBOTT. It is scientifically unsupportable, as well. It is not only economically unfeasible and legally difficult, but it is scientifically unsupportable.

NEED FOR FIRM FIGURE ON NUMBER OF HOMELESS

Senator SPECTER. Well, what I would like to do as a followup to this hearing, Director Rivers and Dr. Prescott, is to see the development of a plan for the District of Columbia, to see what is necessary by way of resources in Washington, DC, to accommodate the kinds of problems which we know exist in the city.

I would like to start by getting a more firm figure as to how many homeless we have in the District of Columbia, so we understand the scope of the problem. We really have to have a better idea than we have at this time.

Two years ago when we had this hearing, the District estimated 2,000 people, and others estimated up to 10,000 people. And it seems to me we do not have much more precision on this figure today than we had 2 years ago.

I would like to have, Director Rivers and Dr. Prescott, in your estimates, what additional workload there would be if we are to have the standard of gravely disabled as opposed to danger to oneself; I would like to know what you think we would confront and how we would handle it with the community-based setting.

And then beyond the District of Columbia, which is the narrower purview of this subcommittee, I would like your estimates, Dr. Talbott, on the national problem. I think that there is a tremendous need for a national response to this issue. We do not have a handle on what it would cost, and I think we have to do that, if it is a $20 billion issue to be divided among State, local, and Federal governments and private institutions, and we have to face up to that.

Congress has made an allocation of some $210 million over the last 2 years as a result of initiatives by a number of us, substantially originating in the hearings which we started 2 years ago here. And I think there is concern in the Congress, I think there is concern in private institutions. The Pew Foundation, Bob Smith, in Philadelphia recently made an allocation to the District of Columbia and nationwide. And we do have certain surpluses on the State level, where funds might be made available for this issue. And I think the American people are concerned about it. But we are going to have to do a lot more by really understanding the scope of the problem and how we have to direct ourselves to it, in terms of the number of people, the costs that would be involved, the kinds of facilities, and confronting the legal issues, which are very important.

SUBCOMMITTEE RECESS

We will have another hearing on this subject, for the city's plan, at least, and we will be following it on the broader national picture.

Thank you all very much for coming. The subcommittee will recess, subject to the call of the Chair.

[Whereupon, at 11:30 a.m., Wednesday, January 23, the subcommittee was recessed, to reconvene at the call of the Chair.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

THURSDAY, FEBRUARY 21, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 1:30 p.m., in room SD–192, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Bumpers.

NONDEPARTMENTAL WITNESS

STATEMENT OF JOAN PETERSILIA, THE RAND CORP., SANTA MONICA, CA

OPENING REMARKS

Senator SPECTER. Good afternoon, ladies and gentlemen.

I regret the late starting time, but when we have these hearings in the afternoon it is more complicated to be as punctual as I would like to be, so I regret the delay.

We are hearing today the subject of probation of felons as that subject impacts on the District of Columbia. This subcommittee has been concerned about the application of both probation and parole systems in the District of Columbia as they reflect upon the ability of those two systems to evaluate properly the conduct of probationers and parolees while at liberty under a period of grace with somewhat more stringent standards for revocation of probation and parole and applicable while taking somebody into custody, and incarceration in the first instance, where there has to be proof beyond a reasonable doubt. There have been some modifications by the courts in the District of Columbia. We are pleased to have the Honorable Fred B. Ugast, presiding judge of the Criminal Division here today, along with distinguished U.S. Attorney Joseph diGenova, and we will have the benefit of testimony from the Rand Corp., Santa Monica, CA, which has undertaken a very extensive survey and study on the issue of probation.

PREPARED STATEMENT

At this time I would like to proceed by calling Ms. Joan Petersilia from the Rand Corp. We very much appreciate your being with us, and we look forward to your testimony. Your full statement will be made part of the record.

[The statement follows:]

STATEMENT OF JOAN PETERSILIA

THE RISE IN FELONY PROBATION

Over the last two decades, several trends have converged to change the nation's probation population. Rising crime rates have led to public demand that criminals get harsher treatment; "just deserts" and incapacitation have displaced rehabilitation as the primary aim of corrections. Consequently, more felons are being imprisoned than ever before in our history. At the same time, budget limitations have made it impossible for prison construction to keep pace with felony convictions. Prison crowding has become so critical that the courts have increasingly used probation to catch the overflow. As Figure 1 shows, between 1974 and 1983, the prison population increased by 48 percent, but the probation population jumped by 63 percent.

Change in U.S. Parole, Probation, and Prison Populations, 1974-1983

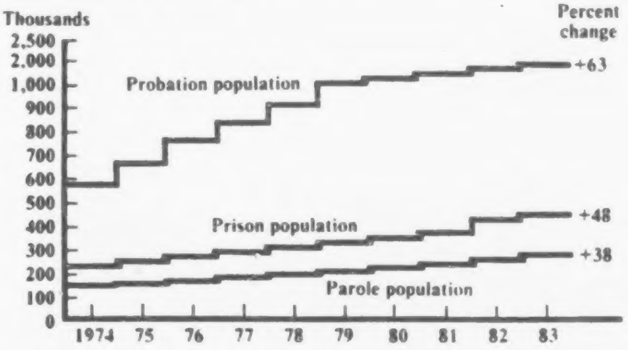

Fig. 1

Probation sentences for adult felons have become so common that a new term has emerged in criminal justice circles: felony probation. Today, over one-third of the nation's adult probation population consists of persons convicted in Superior Courts of felonies (as opposed to misdemeanors). This phenomenon raises some serious questions. Probation was originally intended for offenders who pose little threat to society and were believed to be capable of rehabilitation through a productive, supervised life in the community. Given its intent and structure, can probation accommodate more serious offenders, supervise them properly, and keep them from committing more crimes? Understanding how well probation works for felons is a compelling public safety issue.

THE RESEARCH CONTEXT

Unfortunately, there has been little research on probation itself, and virtually none on felony probation. A recent Rand Corporation study, funded by the National Institute of Justice, used data from California to look at basic assumptions about probation and its mission, to examine the public risks of putting felons on probation, and to consider alternative means of punishing them. This *Research in Brief* summarizes the study findings.[1]

California's probation system is one of the largest in the nation and was once regarded as the most innovative. Most probation systems across the country have experienced budget cuts because of fiscal limitations and the shift from rehabilitation to punishment. With Proposition 13 and other fiscal constraints, California's probation agencies may have suffered the most severe cuts of all. Since 1975, the state's probation population has risen 15 percent, while the number of probation officers has fallen by 20 percent. In the same time period, the state has spent 30 percent more on criminal justice in general, but 10 percent less on probation. Under the circumstances, probation staffs have had to take on greater caseloads, often at the cost of supervising probationers less carefully. Its experiences should be instructive for other states.

In California, 70 percent of all convicted offenders are granted probation. By 1984, one out of every 83 persons between the ages of 9 and 65, or one percent of the state's total population, was on probation. The group's size alone places a tremendous burden on probation agencies, and that burden is made heavier by the increasing number of serious offenders it includes. As Figure 2 shows, a significant proportion of all persons granted probation in 1983 had been arrested and convicted of serious crimes.

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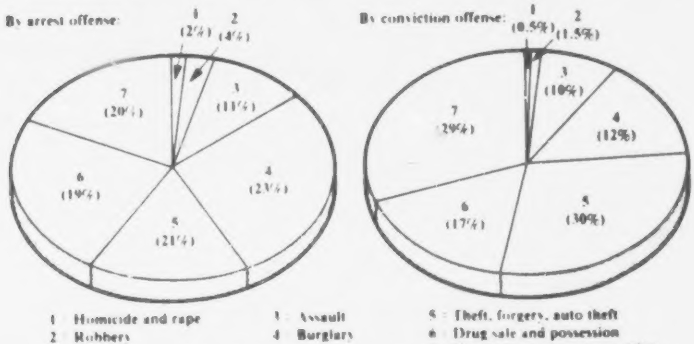
[1] Complete results are contained in *Granting Felons Probation: Public Risks and Alternatives* by Joan Petersilia, Susan Turner, James Kahan, and Joyce Peterson, R-3186-NIJ, The Rand Corporation, January 1985. The report can be obtained by writing Rand, 1700 Main Street, Santa Monica, California, 90406.

Adults Placed on Probation in California, 1983



Source: California Bureau of Criminal Statistics data, 1984

Fig. 2

This situation requires that policymakers look closely at probation, at the public risks of probation for convicted felons and at possible alternative sanctions. In anticipation of the problems and questions that this policy debate will raise, Rand's study was designed to answer some basic questions about probation:

- How well do felons do on probation, measured in terms of rearrests, reconvictions, and incarcerations?
- What criteria do the courts use to decide whether convicted felons go to prison or get probation?
- How accurately can statistical models predict which felons will recidivate and which will not?
- If the answers to these questions indicate that probation is not appropriate for most felons, can the system devise workable alternatives?

To answer these questions, the Rand study performed several types of statistical analyses on data for over 16,000 felons convicted in California's Superior Court during 1980, and recidivism data on a subsample of 1,672 who received probation in Los Angeles and Alameda counties. Because these counties have experienced severe budget cuts and growing caseloads, their recidivism rates may differ from those in counties that have more adequate budgets. Nevertheless, Los Angeles and Alameda supervise 43 percent of the California probation population, and their data provide a good base for addressing the issues surrounding probation as a sentencing alternative for adult felons.

PUBLIC RISKS OF FELONY PROBATION

Felony probation presents a serious threat to public safety. Figure 3 suggests just how serious. Only 35 percent of the probationers managed to "stay clean," as far as official records indicate. During the 40-month period following their probationary sentence, 65 percent of the total sample were rearrested and 53 percent had official charges filed against them. Of these charges, 75 percent involved burglary/theft, robbery, and other violent crimes--the crimes most threatening to public safety. Fifty-one percent of the total sample were reconvicted, 18 percent were convicted of homicide, rape, weapons offenses, assault, or robbery, and 34 percent eventually ended up in jail or prison.

Felony Probationer Recidivism Rates (40 Month Follow-up)

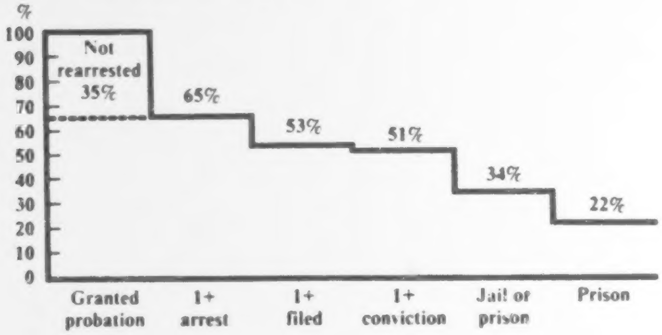


Fig. 3

The data also showed that offenders originally convicted of property crimes (burglary, theft, forgery) were the most likely to recidivate, followed (at some distance) by those who were convicted of violent and drug offenses. Only 33 percent of the property offenders had no subsequent arrests, while about 40 percent of the drug and violent offenders managed to stay clean.

The study also found some other important facts about the probationers. With the exception of drug offenders, they were most often rearrested and convicted of the same crimes they had originally been convicted of. Property offenders tended to be rearrested more quickly than those originally convicted for violent crimes or drug offenses. The median time to first *filed* charge (not first arrest) was 15 months for drug offenders, 5 months for property offenders, and 8 months for violent offenders. However, as Figure 4 shows, both property and violent offenders either committed new crimes or "retired" after two years, while drug offenders continued at a linear rate--that is, during the follow-up, a roughly equal number returned to crime each month.

Consequently, we do not know what the rate of recidivism for drug offenders would be beyond 40 months. Also, we cannot be sure that the recidivism rate for drug offenders would in the longer term remain lower than the rates for property and violent offenders.

Cumulative percent of probationers with filed charges during follow up months, by original conviction crime

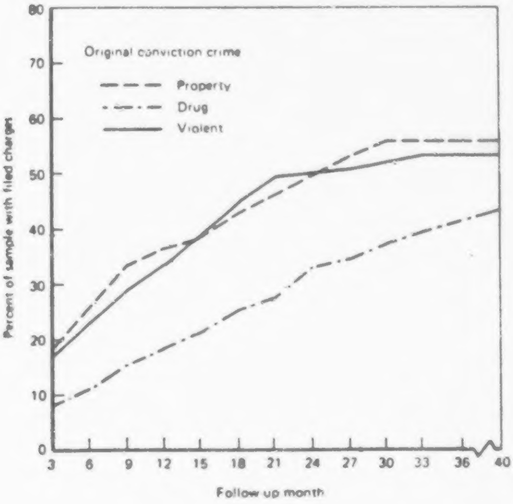


Fig. 4

MAKING THE PRISON/PROBATION DECISION

These high recidivism rates naturally raise questions about what criteria the courts use to decide whether a convicted felon receives a prison or probation sentence. Statistical analyses in the study show a high correlation between prison sentences and certain basic factors of the case that reflect an offender's criminality:[2]

- having two or more conviction counts
- having two or more adult prior convictions
- being on parole or probation when arrested
- being a drug addict

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[2] After controlling for the basic facts of the case, researchers also performed analyses to determine whether the manner in which the case was officially processed by the courts made a difference in the prison/probation decision. The analyses revealed that having a private attorney and obtaining pretrial release could reduce a defendant's chances of imprisonment, whereas going to trial (as opposed to plea-bargaining) generally increased that probability. These "process" variables significantly affected the prison/probation decision even after all the basic factors had been statistically controlled--that is, when all the offenders are statistically "interchangeable" except for their court handling.

- being armed
- using a weapon
- seriously injuring the victim.

The California Penal Code (Section 1202d) states that such factors should be weighed before an offender is granted probation, and the courts do appear to consider them. For all offenses except assault, offenders who had three or more of these characteristics had an 80 percent probability of going to prison, regardless of the type of crime for which they were currently convicted. Because correctional facilities are strained to capacity, prisons appear to be increasingly reserved for "career criminals".

However, when the study attempted to "predict" which sentence the offenders would receive, 20 to 25 percent of the sample received sentences at odds with their "statistically-predicted" sentence. These findings suggest that--in terms of their crimes or criminal records--many of the felony probationers cannot be distinguished from their counterparts who went to prison.

PREDICTING RECIDIVISM

To determine what factors were associated with rearrest, reconvictions, and convictions for violent crime, the study created a hierarchy of information levels similar to the hierarchy that the court uses in the prison/probation decision.[3] The levels reflected (1) type of conviction crime, (2) prior record, drug and alcohol abuse, income, (3) sentence recommendation and special circumstances from the presentence investigation (PSI), and (4) demographics (age, race, education) and living situation.

Regression analyses identified the following characteristics as most significantly related to recidivism:

- **Type of conviction crime.** Property offenders had the highest rates of recidivism.
- **Number of prior juvenile and adult convictions.** The greater the number, the higher the probability of recidivism.
- **Income at arrest.** Regardless of source or amount, the presence of income was associated with lower recidivism.
- **Household composition.** If the offender was living with spouse and/or children, recidivism was lower.

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[3] The Rand data contained over 235 information items, including extensive information about the offenders' criminal, personal, and socioeconomic characteristics.

These factors were equally strong predictors of rearrest, reconviction, and reconviction for violent crime. Nevertheless, as Figure 5 shows, having the information contained in the four levels did not make the statistical prediction of rearrest a great deal better than chance. For the total probation sample, knowing the type of conviction crime improved over chance by only 2 percent. Considering information on prior criminal record, drug and alcohol use, and employment made the prediction 11 percent more accurate than chance. However, adding demographics increased accuracy only 2 percent more--for a total of 69 percent in predicting rearrests. The study's predictions for reconvictions were only 64 percent accurate, while those for violent crime reconvictions were 71 percent accurate. Thus, using the best statistical models and a wealth of information on offenders, we could not predict recidivism with more than 71 percent accuracy.

It is interesting to compare the factors that predict the prison/probation decision with those that predict recidivism. There is not as much correspondence as one might expect. The only factor that strongly predicts both the decision to imprison and recidivism is prior adult criminal convictions. Prior juvenile convictions, while a very strong predictor of recidivism, was not particularly influential in the sentencing decision. Most of the other factors important to the imprisonment decision, such as weapon use and victim injury, failed to significantly predict recidivism. Likewise, factors that predicted recidivism, such as living situation and monthly income, failed to influence the imprisonment decision. These differences undoubtedly reflect the trend in the California sentencing system toward a "just deserts" model, where sentencing is based primarily on the crime and prior criminal record, and not on factors necessarily associated with recidivism.

Statistical Ability to Correctly Predict Rearrests

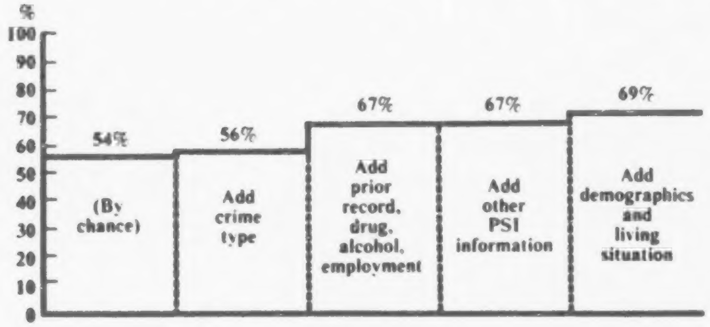

Fig. 5

Figure 5 also reflects some important facts that the study discovered about presentence investigations (PSIs). Like many of their counterparts across the nation, probation agencies in Los Angeles and Alameda counties spend almost half their time and resources preparing PSIs. In California, PSIs routinely include very detailed offender and offense information, plus judgements made by the probation officer concerning special aggravating or mitigating factors (e.g. offender is remorseful, has health problems, testified against accomplices). As Figure 5 shows, this *additional* information from the PSI did not improve the recidivism prediction, once the analysis controlled for the offender's background and criminal history (which also comes from the PSI).

Moreover, the study found that, contrary to common belief, the courts do not necessarily follow the PSI's sentence recommendation. In the two counties, the PSI had recommended prison for 31 percent of the offenders who got probation. Although this tendency to override the PSI recommendation merits more study, it may reflect the courts' awareness that PSIs aren't necessarily accurate in predicting recidivism. In the probationer sample, 63 percent of the people they recommended for probation were rearrested, compared with 67 percent of those they recommended for prison (see Figure 6). Similar results were obtained for reconvictions and reconvictions for violent crimes. *In only a few instances did the offenders they recommended for probation behave significantly better than those they recommended for prison.*[*]

Relationship Between PSI Sentence Recommendation and Recidivism (All Offenders Combined)

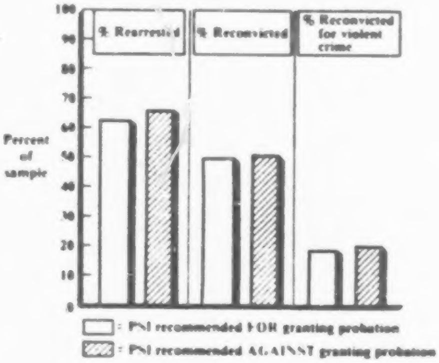

Fig. 6

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[*] These findings on PSIs should be interpreted cautiously. The PSIs examined were prepared in counties where officials admit to having less than adequate time to prepare proper reports. Under these conditions, it is not surprising that the PSI information does not adequately distinguish recidivists. In less burdened counties, the "predictive" quality of the PSI might be higher.

The problems with predicting recidivism prompted the analysts to approach the prison/probation decision from the opposite direction: is it possible to identify convicted felons who have a relatively *high* chance of succeeding on probation, and are there enough of them to significantly reduce the prison population without jeopardizing public safety? The study created a statistical model, based on regression analyses, of "good prospects" for probation. This model used characteristics common to probationers who had no new convictions to see how many prisoners would have had a 75 percent chance of successful probation. Unfortunately, only about 3 percent of California's 1980 "incoming" prisoner population qualified. This result reinforces the study's general finding that very few adults convicted of felonies in Los Angeles and Alameda counties are good candidates for probation, as it is now administered.

This conclusion is not intended as an indictment of the probation departments. With their reduced budgets and mountainous caseloads, they cannot supervise probationers much more closely. However, even if they could, routine probation was not conceived or structured to handle serious offenders. And, what is worse, these offenders seem to have crowded out the traditional probationer population--first offenders, petty thieves, drug offenders, and disrupters--many of whom evidently see the system's "indifference" as encouragement to commit more serious crimes. Prior Rand research has shown that believing they can "get away with it" is characteristic of career criminals. (Petersilia, 1977)

FINDING ALTERNATIVES

The criminal justice system is facing a severe dilemma. Probation caseloads are increasing at the same time that budgets are shrinking. Nevertheless, probation will probably be used for still more convicted felons because of prison crowding and the lack of funds to build more prisons. Most of the felony probationers in the Rand study failed on probation, and it seems unlikely that the courts can improve their ability to predict recidivism, given current information and methods. Further, very few offenders now entering prison are good prospects for traditional probation.

The situation demands that the system rethink its response to felony probationers. Without alternative sanctions for serious offenders, prison populations will continue to grow and the courts will be forced to consider probation for more and more serious offenders. Probation caseloads will increase, petty offenders will be increasingly "ignored" by the system (possibly encouraging recidivism), and recidivism rates will rise. Present difficulties result from the fact that the criminal justice system has never developed a spectrum of sanctions to match the spectrum of criminality. Some believe that the U.S. overutilizes imprisonment because it is virtually the only severe punishment that remains. There is a critical need to establish a greater array of sentencing options. However, new options must be restrictive enough to ensure public safety. One promising approach being tried in Georgia and New Jersey is intensive surveillance programs (ISPs). The New Jersey ISP keeps offenders under strict curfew, requiring them to be in their homes from 10 p.m. to 6 a.m. Participants must also maintain employment, receive counseling, provide community service, submit to random urine testing for drugs, and make restitution to their victims. NIJ is sponsoring an evaluation of the program, and preliminary results are encouraging. Of the 226 persons who have participated in the program during the past 14 months, 29 (13 percent) have been returned to prison--only one for an indictable offense. Most of the violations were curfew and drug-related (Pearson, 1985).

Intensive surveillance programs cost $3,000 to $5,000 per offender per year, as compared to about $1,600 for each person on probation and $14,000 for each offender in prison. To help pay for these programs, some states have begun to collect probation supervision fees from the felons themselves. Georgia's ISP is basically self-supporting, and during its first year of operation, collected about $650,000 in probation supervision fees (Erwin , 1983). Other states are developing risk-prediction models that identify "low-risk" probationers needing minimal supervision, thus allowing more resources to be applied to high-risk individuals.

Given problems of prison crowding and the risks of felony probation, intensive surveillance may well be one of the most significant criminal justice experiments in the next decade. If ISPs prove successful, they will restore probation's credibility and reduce imprisonment rates, without significantly increasing crime. Most important, since such programs require that offenders be gainfully employed, functioning members of a community, they offer the prospect of rehabilitating some of the offenders who participate.

REFERENCES

Erwin, Billie S., *Evaluation Design: Georgia's Intensive Probation Supervision Program*, Office of Research and Planning, Georgia Department of Offender Rehabilitation, 1983.

Pearson, Frank, "New Jersey's Intensive Supervision Program: A Progress Report," *Crime and Delinquency* (forthcoming), 1985.

Petersilia, Joan, *Criminal Careers of Habitual Felons*, The Rand Corporation, R-2144-DOJ, June 1977 (coauthored); also published as GPO document, July 1978.

STATEMENT OF JOAN PETERSILIA

Ms. PETERSILIA. Thank you.

I am Joan Petersilia. I am a criminologist with Rand, and I have been there for about 10 years now. During that time I have conducted studies concerning the policing of career criminals and most recently felony probation, and that is the topic that brings me here today. I think I should begin by making the distinction between probation and parole, because I have learned through the past 3 weeks that probation is commonly confused with parole. Probation is in lieu of prison, and parole is a sanction where prisoners are allowed to be released early.

I realize that many people who should know the difference commonly confuse the two. The fact that I have to begin by defining probation illustrates the first point I would like to make. Even though 60 to 80 percent of all persons convicted are placed on probation, probation receives very little policy or research attention. It is safe to say that we know less about probation, its clients, its effects, and its services, than any other aspect of the criminal justice system.

Prison crowding is a matter of common knowledge and concern, but few people are aware that probation is equally burdened. There are four times as many probationers as prisoners in the United States, and their numbers are growing 30 percent faster than the prison population. However, this growth does not imply public or financial support. Although some people believe that probation is the best hope for effective human correction, others claim that it should be abolished, because it neither rehabilitates nor controls the offenders it supervises.

Current policy discussions about sentencing reflect the public's zeal for harsh penalties, and probation is seen as lenient. As a result, most probation agencies have had their budgets cut while their caseloads have expanded dramatically. In fact, over the last decade probation agencies have experienced more budget cuts than any other facets of the criminal system. This is universally nationwide in almost every county we have looked at, but despite a lack of enthusiasm for probation, certain conditions dictate that probation populations will continue to grow. Prisons have become so overcrowded that courts have limited their capacities in 31 States.

At the same time, financial conditions include building enough new prisons to keep pace with felony convictions. Consequently, courts have had to seek other alternatives, and in many jurisdictions probation has become the only viable alternative. This phenomenon has radically changed the nature of the probation population. Probation officers now supervise offenders who are much more threatening than the minor criminals that probation was intended to handle. Recognizing the need to know more about the situation of felony probation, that is, its use for adults convicted of serious crime, the National Institute of Justice funded the study that I am going to be summarizing.

PRIMARY PURPOSE OF RAND STUDY

The primary purpose of the Rand study was to learn whether felony probation presents unacceptable risks for public safety and, if so, what the system could do to overcome those risks. We used data on over 16,000 offenders convicted of felonies in California, and recidivism data on those who received probation. We used data on over 16,000 offenders convicted of felonies in California, and recidivism data on those who received probation in Los Angeles and Alameda Counties.

Although the data are limited in our study primarily to California, we believe the findings have significance for other States as well.

On the other hand, our recidivism results may be higher than in those States operating with more adequate budgets. Our analysis suggests unequivocally that routine probation is not a good bet for those convicted felons, that currently available information does not permit the courts to predict recidivism precisely, and that the system should consider alternatives to traditional probation for these offenders. Sixty-five percent of the probationers we tracted were rearrested. Fifty-one percent were reconvicted and 34 were sentenced to either jail or prison for new crimes in the 40-month followup period.

These probationers were responsible for nearly 3,000 filed criminal charges, and we studied about 1,500 of them. Further, of those arrested again, 75 percent were charged with burglary, robbery, or other violent crime, and of those who were actually convicted again, 25 percent were found guilty of serious violent crime, homicide, rape, kidnap, assault, and armed robbery.

The point being that most of these offenders, two-thirds of them, recidivated, and their crimes were not minor. This poses a dilemma. Budgets are shrinking, prisons are crowded and probation is increasingly catching the overflow. Rethinking our response is clearly in order.

First, all offenders who are not sentenced to prison must be classified. A number of scales that we developed can help.

Others, especially those convicted of felonies, must be placed in highly structured, carefully supervised programs. Programs for offenders such as those you will be hearing about in Georgia illustrate what must be done. Providing these sanctions will be expensive, but not as costly as building and maintaining new prisons or compensating and caring for the victims of new crimes.

Senator SPECTER. Providing what sanctions are those? You say providing those sanctions will be expensive.

COMMUNITY SURVEILLANCE PROGRAMS

Ms. PETERSILIA. Providing intensive community surveillance programs, such as the Georgia program, will be more expensive than routine probation as we now administer it. About five times as expensive. But more money alone will not be enough to put probation on the right track. Probation faces an even greater challenge. I do not believe that probation will survive if it is not willing to alter its priorities, away from offender counseling, and toward offender surveillance.

I do not say this to be an alarmist, but similar discussions used to surround parole, and parole was recently abolished for all Federal prisoners, in 1984. Probationers must move quickly to show that they are capable of doing one thing well, making sure that court-ordered probation conditions are not being violated, and discovered violations result in immediate incarceration. If probation accepted this, I believe they could find themselves back in favor with the public.

One final note. Suggesting that probation move from rehabilitation toward restrictive supervision is an idea that meets with great resistance from some probation officials. They are firmly committed to the ideals of rehabilitation and treatment. I do not believe that what I am suggesting requires abandoning these values. It seems to me that probation, even with the greater restrictions implied by intensive surveillance programs, is more humane and a preferred alternative to prison, and if probation is to survive at all in these times, it is likely to be on those terms only. Thank you.

BASIC FACTORS CONSIDERED IN GRANTING PROBATION

Senator SPECTER. Thank you very much, Ms. Petersilia.

Did the Rand Corp. study deal with specific cases to make an evaluation as to whether the judgment to grant probation as opposed to prison was sound at the time?

Ms. PETERSILIA. One of the major issues that we did look at was how that decision was made, how judges decide who goes to probation, who goes to prison.

Senator SPECTER. What were your findings?

Ms. PETERSILIA. We found that basically three factors determine who goes to prison in California, and in other States we were able to look at, whether the individual has a prior adult conviction, consisting of two to five prior convictions, whether or not he is convicted on more than one count, and whether he used a weapon in the current offense. Individuals who had those three factors had an 80-percent chance of going to prison, and without them the probabilities were very low.

Senator SPECTER. So you are saying that, for a first offender without a weapon, the chances of probation are good?

Ms. PETERSILIA. Are 80 percent or better.

Senator SPECTER. Do you have a judgment as to whether that is a sound sentencing practice?

Ms. PETERSILIA. I think it is the only realistic sentencing practice we can now endorse, given the current prison crowding situation. It would be unrealistic to suggest——

IMPACT OF PRISON CROWDING

Senator SPECTER. Do you think that the prison crowding situation leads to probation for some convicts who would not get probation if prison space were available?

Ms. PETERSILIA. I am convinced that prison crowding creates a backlash of the system that does increase probation populations of more serious offenders.

Senator SPECTER. Can you give a quantitative judgment as to how many people are placed on probation because there is not enough room to put them in jail?

Ms. PETERSILIA. Twenty-five percent of the people, at least 16,000 people we studied, looked exactly like prisoners. Statistically, their prior records and violence they used in the crime, would suggest that 25 percent of the probation population would not have gone to probation if it were not for prison crowding.

Senator SPECTER. You studied 16,000, and how many of the 16,000 got probation?

Ms. PETERSILIA. About 12,000.

Senator SPECTER. Seventy-five percent got probation?

Ms. PETERSILIA. Overall, about 60 to 80 percent of all people convicted get probation, and that is in California and nationwide.

Senator SPECTER. And you think about a quarter of those who get probation ought to be in jail and would be in jail if there were enough space?

Ms. PETERSILIA. That would be my estimate.

Senator SPECTER. Did you find many cases where people were placed on probation where they had a conviction with a firearm?

Ms. PETERSILIA. Yes; about 10 percent of our people who were placed on probation were convicted of armed robbery, and people find that unexpected. If you knew the victim, regardless of whether or not you used a firearm, you were likely to get probation.

Senator SPECTER. Were there cases where people were placed on probation with armed robbery——

Ms. PETERSILIA. Less so, but there were instances.

Senator SPECTER. In some cases?

Ms. PETERSILIA. Yes.

Senator SPECTER. How about probation where there were prior convictions for crimes of violence?

CONSIDERATION OF JUVENILE RECORD

Ms. PETERSILIA. We found that the juvenile record was not as important a factor. So that people who had very long juvenile records went to probation, and it was not until you had an adult record that you went to prison.

Senator SPECTER. Was the juvenile record any factor at all?

Ms. PETERSILIA. People say that it gets used in kind of an informal way. We did not find——

Senator SPECTER. Did the judges have access to the juvenile record?

Ms. PETERSILIA. It is written on the presentence report, some judgment of it. Many judges don't believe what is written there.

Senator SPECTER. Is that lawful under the law in California, to make a juvenile record available before sentencing? It is not lawful under Pennsylvania law.

Ms. PETERSILIA. Even if the arrest resulted in a formal disposition?

Senator SPECTER. Yes.

Ms. PETERSILIA. That is the law in California.

Senator SPECTER. You cannot under Pennsylvania law have access to a juvenile's record at the time of the sentencing on a subsequent adult offense.

Ms. PETERSILIA. I think that probably contributes more to crime than any other factor that I have personally researched in my 10 years, because we know that the age of criminality is right after you pass over the jurisdiction of the juvenile and the adult court, between the ages of 18 and 23.

Senator SPECTER. How frequently did you find probation being given on a crime of violence where the defendant had a prior criminal conviction?

Ms. PETERSILIA. Almost constantly, if it is only one prior conviction. It is not until you reach two or more adult convictions that the probability of going to prison is anything over 50 percent, regardless of juvenile, and one prior adult——

Senator SPECTER. You are saying if the prior adult conviction was armed robbery and the second offense was armed robbery, that the likelihood would be probation?

Ms. PETERSILIA. I would say, and I am not sure exactly, but I would say the probability of getting probation would be 30 to 50 percent.

Senator SPECTER. Even with a prior conviction for armed robbery and a conviction for armed robbery——

Ms. PETERSILIA. If no one was actually hurt, I would say the probability would be at least 30 to 50 percent of getting probation on that second armed robbery.

ISSUE OF PROBATION REVOCATION

Senator SPECTER. Did you study the issue of probation revocation where a person is charged with a subsequent offense?

Ms. PETERSILIA. Not the process per se. We just have the rates at which it happened. We did find that the process was very long and at least in large urban counties, that if the new arrest is not evidenced, that the conditions of probation can be violated constantly without a revocation occurring.

Senator SPECTER. What were your specific findings on that?

Ms. PETERSILIA. Well, for instance, we heard from many probation officers that they simply didn't violate anybody if they were just in violation of a technical condition, like under alcohol use, that type of thing.

Senator SPECTER. Drug use?

Ms. PETERSILIA. A new arrest——

Senator SPECTER. How about drug use?

Ms. PETERSILIA. Drug use is something they simply do not have the resources to violate people, just for drug use.

Senator SPECTER. When you say violate, you mean have a revocation proceeding pending probation?

Ms. PETERSILIA. Right. Having a revocation hearing.

Senator SPECTER. And suppose somebody is on probation and they are charged with a subsequent offense? What happens in that situation characteristically?

Ms. PETERSILIA. Then, because they have a police arrest, they are able to revoke.

Senator SPECTER. Do they?

Ms. PETERSILIA. They try. It is a 6-month-long process, and they say they get about one-half the cases they want to revoke, that they are actually able to revoke.

STANDARD FOR REVOCATION

Senator SPECTER. Do you know what the standard is for revocation? That is, somebody is on probation, they are charged with a subsequent offense, what must be proved in order to revoke the probation for the prior offense?

Ms. PETERSILIA. A new police arrest.

Senator SPECTER. Just an arrest?

Ms. PETERSILIA. Yes.

Senator SPECTER. Probable cause to believe that the offense occurred?

Ms. PETERSILIA. Yes.

Senator SPECTER. What kind of evidence do they take?

Ms. PETERSILIA. Well, in essence, the best way, the most sure way that they can get a revocation and an offender off the street is to go through the entire hearing, the arrest hearing, and prove beyond a reasonable doubt to obtain a conviction, and they simply disregard the probation and have a new arrest.

Senator SPECTER. Well, if they obtain a conviction on the subsequent charge, then obviously that is grounds to revoke the probation on the first charge, but is probation revoked characteristically in the absence of conviction on the second charge?

Ms. PETERSILIA. They would say they revoke on arrest.

Senator SPECTER. Well, do they revoke probation simply on the fact of arrest or is there a hearing?

Ms. PETERSILIA. There is a hearing, obviously, yes. I am sorry. But I am saying if they have probable cause, they will undertake proceedings to revoke and not necessarily wait for a formal conviction.

Senator SPECTER. So it is probable cause, and the second offense was committed?

Ms. PETERSILIA. Yes.

Senator SPECTER. Even that takes 4 months?

Ms. PETERSILIA. Yes.

Senator SPECTER. Would you stay, Ms. Petersilia. I think there may be some questions that may arise as we hear from the next witnesses.

Mr. diGenova, would you join us. We appreciate your being with us again. We appreciate the leadership that you are showing in the District of Columbia from the position of U.S. attorney, and we look forward to your testimony.

OFFICE OF THE U.S. ATTORNEY

STATEMENT OF JOSEPH E. DIGENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA

Mr. DIGENOVA. Good afternoon, Mr. Chairman. Thank you once again for providing the U.S. attorney's office with an opportunity to hopefully contribute something worthwhile to your always important proceedings. We have no prepared testimony this afternoon, Mr. Chairman.

We are prepared to respond to any questions you might have. We understand your tight schedule, and therefore submitted ourselves to the subcommittee for questions, and without further ado, I would propose to simply do that.

Senator SPECTER. That is an extraordinary succinct statement for a lawyer, Mr. diGenova, and I will respond with an equally succinct response. Please keep your seat, and we will hear from you some more.

We are pleased to be joined by the distinguished judge of the Criminal Division of the District of Columbia Superior Court, the Honorable Fred B. Ugast. We have had a number of conversations with Judge Ugast about the probation procedures in the District of Columbia and the procedures for revocation, and this subcommittee and the full committee, I think, have been helpful in providing additional resources and additional funding, and we are interested to know how things are going.

Judge Ugast.

DISTRICT OF COLUMBIA

SUPERIOR COURT

STATEMENT OF FRED B. UGAST, PRESIDING JUDGE, CRIMINAL DIVISION, D.C. SUPERIOR COURT

Judge UGAST. Thank you, Senator.

It is a pleasure to be here again. I do not have a prepared statement either, but I am prepared to report on the new probation revocation procedures that we have put into effect within the last 3 weeks.

Senator SPECTER. Let me say, Judge Ugast, the absence of prepared statements is no drawback at all to effective hearings. Speaking from the heart and from the mind is a great thing, which we see too little of in Senate hearings. There is the great story about the chairman and the witness who got off synch on the questions and answers which had been worked out carefully in advance and no one noticed the difference. [Laughter.]

That does not happen without a prepared statement, so we look forward to your testimony.

PROBATION REVOCATION HEARINGS

Judge UGAST. The new procedures that we discussed with you at one of our previous hearings deal with the manner in which probation revocation hearings are to be conducted where an individual on active probation is rearrested. These procedures are in place, and basically combine two different hearings into a single joint hearing. This combined hearing deals with the issue of probable cause with respect to the new charge and the preliminary probation revocation hearing. This procedure facilitates the hearing of both issues by a single judicial officer, and we are using new commissioners to do this. It also permits an earlier determination as to whether or not the defendant should be detained or allowed to remain in the community on probationary status while awaiting trial on the new charge.

It is not the probation revocation. It is the preliminary revocation proceeding at which it is determined whether the individual shall remain at liberty pending a final hearing.

In the past, we limited this type of procedure to those active probationers who were rearrested for very serious and violent offenses. What we have done is to set this procedure up to revolve around the provisions of our bail statute which permit a judicial officer to hold for 5 working days a person who is rearrested and appears before him for bail determination on the new charge when it appears that he is on probation or parole for another offense, and we have used that portion of the bail statute to set up procedures that we have put in place. There have been approximately 80 5-day holds granted in the past couple of weeks and 44 hearings have been held already with respect to those cases. There is a 5-day lag between the granting of the hold and the hearing, so we feel that the procedure will address both the court's concerns and concerns expressed by you at those previous hearings.

EFFECTIVE DATE OF NEW PROBATION REVOCATION HEARINGS

Senator SPECTER. Judge Ugast, how long has this new procedure been in effect?

Judge UGAST. Since January 28.

Senator SPECTER. So it has been in effect slightly less than 1 month.

Judge UGAST. Slightly less than 3 weeks.

Senator SPECTER. January 1985.

Judge UGAST. Yes.

Senator SPECTER. Has this been put into effect as a formal rule change?

Judge UGAST. No; we did it by procedures established by the chief judge which modify prior procedures. We stayed within the rule as set up with respect to the procedures that must be followed at those types of hearings.

Senator SPECTER. So it is a procedure change as you would articulate it as opposed to a rule change?

Judge UGAST. Yes; we worked within the rule that we had established and we feel the procedure meets the requirements of the rule, with respect to the hearing and notice provisions.

Senator SPECTER. And this procedure change, of course, is in writing?

Judge UGAST. Yes.

Senator SPECTER. Is it long? Can you read it?

Judge UGAST. It is about 4 or 5 pages, because we covered 4 or 5 different situations. Let me give you the first situation that is covered. The following procedures will apply upon the filing of a new felony complaint, where a 5-day hold is ordered. When a felony complaint is filed against an individual under active probation supervision for any offense, and a 5-day hold is ordered on the new charge, the presentment of the new complaint—the hearings shall be combined in a single joint hearing.

REQUIREMENTS OF PRELIMINARY HEARINGS

Senator SPECTER. Judge Ugast, where you have somebody arrested, what is the timeframe for the preliminary hearing under D.C. law?

Judge UGAST. It is 10 days if the individual is held; that is, not released, 20 days if released. That is the requirement.

Senator SPECTER. And is it required following the provisions for preventive detention that bail be set on arrest to provide for release between arrest and the preliminary hearing?

Judge UGAST. If a case meets the 5-day hold test, bail need not be set for the 5 days. At the end of the 5 days, when you would normally have your preliminary hearing, then the determination as to bail on the new charge would have to be made. If the test for pretrial detention is met, the defendant may be held without bond on the new charge.

Senator SPECTER. Assume it is a fresh arrest. There is no probation violation at issue and it is not a case for application of preventive detention provisions.

Now, that person, then, if he is held, must have a preliminary hearing that you have described within 10 days.

Judge UGAST. Yes, sir. If say a $5,000 bond was set at the presentment, his hearing must be held no more than 10 days later.

Senator SPECTER. Now, is it required that bond be set in all of those cases so he can post bail and be at liberty?

Judge UGAST. We have to set a bond, conditions for release of some kind.

FIVE-DAY HOLD WITHOUT BAIL RULE

Senator SPECTER. Now, if the arrest is accompanied by a detainer for a possible probation violation, then you have a provision for a 5-day hold without bail.

Judge UGAST. Yes, sir.

Senator SPECTER. Now, does this rule provide that the combined preliminary hearing and revocation procedure must be held within the 5-day period?

Judge UGAST. That is the way we have set it up.

Senator SPECTER. So you now effectively have eliminated the hiatus which you had before where someone can be arrested on a second charge and they could be released without a determination of whether probation had been violated.

Judge UGAST. That is correct.

Senator SPECTER. Now, you have an absolute system for determining whether probation has been violated by virtue of this hearing, where you see if there is probable cause to believe that a new offense has occurred and, if that is so, then there is a basis for revoking probation.

Judge UGAST. That is correct.

There is one question. If someone made a bond, if the 5-day hold is not granted and a bond was made, then there could still be that hiatus, but the hearing would be held within the time that was set. But ordinarily in these cases the 5-day hold will be granted.

Senator SPECTER. Well, isn't the 5-day hold mandatory?

Judge UGAST. It is not.

Senator SPECTER. What are the circumstances for the applicability of the 5-day hold?

Judge UGAST. When a person arrested is on probation or parole and that person is likely to flee or be a risk or danger to the community or some other person.

Senator SPECTER. Well, if you have the condition of likely to flee or be a danger to the community, then there is a gap in the procedure.

Judge UGAST. There is the gap to the extent that a finding could not be made as to either one of those two, but in any event, we have provided that the combined hearing nevertheless would be held at the time of the preliminary hearing on both, so there could be the 10-day lapse, but at that time the initial revocation hearing would have to be held at the same time.

Senator SPECTER. Now, the 10-day requirement comes into play if the person is not on bail.

Judge Ugast. Right.

Senator SPECTER. If the person is on bail it could be 20 days.

Judge UGAST. Right.

Senator SPECTER. What has been your experience so far with the applicability of the 5-day hold? Have you had many cases where a person is charged with an offense while on probation from the 5-day hold?

Judge UGAST. I believe only one or two at the most. I had that figure—there was one.

Senator SPECTER. What kind of a case was that, if you know?

Judge UGAST. I don't know.

Senator SPECTER. I would like to find out about it, if you could, Judge Ugast, and provide that for the record, if you would, please.

You said that there is a question of parole violation as well as probation violation encompassed in the new rules.

Judge UGAST. No; but the rule on the 5-day hold also deals with an individual in the same posture, new arrest and on parole, a 5-day hold may also be granted under the same conditions to give parole authorities an opportunity to file——

Senator SPECTER. The 5-day hold applies for potential parole violation as well as probation violations?

Judge UGAST. Yes, sir.

NUMBER OF HEARINGS UNDER NEW PROCEDURE

Senator SPECTER. Do you know what has happened in 80 cases, I think you said, 80 cases with 5-day holds which have been placed since this rule took effect on January 28?

Judge UGAST. Yes, sir.

Senator SPECTER. And how many of those have gone forward to hearing? You say 44?

Judge UGAST. Forty-four.

Senator SPECTER. And do you know how many of those who have had probation revoked?

Judge UGAST. I believe at least 36 of those were held with no bond or held on a bond. Probation was not revoked. It was the initial proceeding, but 36 were held without bond or a bond set in connection with the new charge and the probation case awaiting a final probation revocation hearing, either within 60 days or at the final disposition of the new charge.

Senator SPECTER. Now you have lost me. If they are held without bond they have to have a preliminary hearing within 10 days.

Judge UGAST. What I am saying is that the preliminary hearing on the new charge is to be held within 10 days. We provided this procedure for whether or not they will remain in the community on probation status. If we hold them without bond they are not in the community, but the determination of final probation revocation is not made until either the disposition of the new charge with conviction or without a conviction at that time the judge will then determine whether he will revoke or not.

Senator SPECTER. Are they held without bond on any situation other than as a preventive detention procedure?

Judge UGAST. Yes, sir. What I am talking about, bond would be set in the new charge in any event, but on the old charge involving the probation, if it is thought that the risk to the community or flight by virtue of the new arrest for which probable cause has been found, then that individual should be detained until the new matter is finally resolved.

Senator SPECTER. On the first charge or on the probation violation charge——

Judge UGAST. Probable cause having been found as to the new charge.

Senator SPECTER. But that is after a hearing.

Judge UGAST. Right. That is why we cannot do anything on the probation case until that same hearing is held.

Senator SPECTER. Let us go back to the statistics and see if I can understand what has happened.

You have had 45 of these hearings which have been held.

Judge UGAST. Now.

Senator SPECTER. Are you saying that in 36 of those 45 hearings there has been a showing of probation violation so that people are held as probation——

Judge UGAST. On the basis of probable cause for the new arrest and the probationary status, has been held without bond in 36 of those cases, and bond has also been set in the new cases.

REVOCATION OF PROBATION UNDER NEW HEARING PROCEDURES

Senator SPECTER. So probation has been revoked in 36 of the 45 cases which have been heard?

Judge UGAST. Initial revocation.

Senator SPECTER. Initial revocation?

Judge UGAST. Yes.

Senator SPECTER. And what is the procedure for a final revocation hearing?

Judge UGAST. Under the rule, within 60 days, a final revocation hearing must be held unless the individual elects to postpone that hearing on the final revocation until after disposition of his new charge, which could be by plea or be by trial.

Senator SPECTER. But that would be by agreement that he would remain in custody?

Judge UGAST. Yes.

Senator SPECTER. So the final revocation hearing has been 60 days, but in the interim that person stays in custody.

Judge UGAST. Right.

Senator SPECTER. On the other 9 cases, 45 hearings, 36 probations revoked, of those other 9 cases were the new charges dismissed against the defendant?

Judge UGAST. I do not have the full details on those, but in a couple of cases the government was unable to go forward with the presentation of evidence on the probable cause hearing, and on one or two others, actually, an indictment was returned, so the matter was put over for a further hearing, probable cause not having been found against the defendant. The individual was held, but not on this basis. I do not have the data on the three or four others.

Of the 44 hearings, 36 held without bond, or held on bond and I only have information on 3 others, which had to be continued, and the individual held until the probable cause hearing bond was set.

Senator SPECTER. So the government cannot present the information on the charge, and the 5-day lapses, the person is entitled to release.

Judge UGAST. On the probation matter, but bond would be set for the new charge in any event.

Senator SPECTER. But if he posted bond on the second charge, he could be released.

Judge UGAST. Yes, sir.

Senator SPECTER. Is the standard the same for probable cause on the second offense as for probation revocation for the first offense?

Judge UGAST. Yes, sir; probable cause is the probable cause that this individual committed the particular offense, and our rules provide that the standard determining release for probation is the same standard that applies after the conviction; that is, likely to flee or poses a danger to the community or other persons.

Senator SPECTER. But it is sufficient to have a revocation of probation if it is likely to believe that an offense has been committed?

Judge UGAST. Yes.

Senator SPECTER. What is the standard for final revocation?

Judge UGAST. That is a matter for resentencing in terms of all the factors. The new offense, the old offense, and any other aspects of his compliance with other conditions of probation while he was on probation. It would be a question really then of resentencing.

Senator SPECTER. If the trial has not occurred when the preliminary hearing and the final probation revocation hearing, the final probation revocation hearing is a full-blown hearing going into the full facts of the subsequent arrest?

Judge UGAST. Yes, sir.

Senator SPECTER. All right. It sounds to me as if you have made some real progress, Judge Ugast, in terms of having this rule in place, and now you have, at least in 36 of these 44, kept the people in detention who were on probation long enough to have a hearing to determine probable cause for revocation of probation, and they are in custody.

Judge UGAST. Right.

Senator SPECTER. How is the system working in your judgment, Mr. diGenova?

NEW HEARING SYSTEM WORKING

Mr. DIGENOVA. Mr. Chairman, from all I can tell, it is working very, very well. The resources of everyone in a situation like this of a new procedure are stretched a little bit, but the procedure seems to be working exceptionally well. We are generally prepared to go forward in everyone of these proceedings. Occasionally a police officer might not be available or another witness that we need, but that has been the exception rather than the rule. And, obviously, from our perspective, given the significance of the Rand study in terms of the obvious threat to public safety by virtue of the serious crimes committed by felons on probation, the ability of the government to move under the new rule for immediate revocation is substantial, significant, important, and very valuable in terms of the public safety.

Senator SPECTER. Well, there are two questions before us. The one question of whether probation is being granted appropriately in the first instance, and the second question as to how you deal with probation revocation, where a subsequent charge has been lodged, and that, as you know, has been of great concern to this subcommittee, as well as to Judge Ugast and his force, and as to you. And I like what I am hearing today, because it appears that the court has now instituted a rule which, when the law has its hands on somebody who is on probation charged with another offense, that person stays in custody for 5 days, and the procedures are now set up to have a combined hearing, preliminary hearing and initial probation revocation hearing, and out of 44 men taken into custody since this rule went into effect January 28, 36 of them are remaining in custody, and that seems to be a pretty good system for the moment.

Mr. DIGENOVA. It seems so to me, too. Mr. Chairman.

LIKELIHOOD TO FLEE OR DANGER TO COMMUNITY

Senator SPECTER. Is there any concern on your part about the conditions of likelihood to flee or a danger to the community on some determination made that either of those attitudes might let defendants out who have been arrested for a subsequent offense after being on probation?

Mr. DIGENOVA. Not at the moment, Mr. Chairman. We have been much more aggressive in our use of pretrial detention, and this was applied to first degree murder, so it is now available in that area. The initial revocation proceedings are working very well already, since the January startup of the new probation revocation proceedings. There does not appear to have been any problem whatsoever with that standard. Probably constitutionally we are going to need something akin to that standard, if not that standard exactly. One thing we want to take a look at are the new presumptions which have been proposed in the new Comprehensive Crime Control Act of 1984 which, as you know, create presumptions of dangerousness in dangerous crimes and drug trafficking per say.

Beyond that, the standards for pretrial and post-arrest release for probation setting are quite good, as far as we are concerned.

Senator SPECTER. Fine. We will monitor the system. We will see how it goes.

Judge Ugast, Ms. Petersilia, if you will stay with us while we hear some of the other witnesses, I think there could be some questions.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:
MARGARET P. SMITH, WASHINGTON, DC
MARY CULLMAN, CHEVY CHASE, MD

Senator SPECTER. I would like to call on what we have listed as a panel, Mrs. Margaret P. Smith, Washington, DC, Mrs. Mary Cullman, Chevy Chase, MD, and Mr. David C. Evans, Commissioner, Probation Division, Georgia Department of Offender Rehabilitation, Atlanta, GA, accompanied by Vince Fallin, Deputy Commissioner.

If you will join us at this time I will be appreciative.

Mrs. Smith, we have asked you to join us today in the light of your own personal experience with the problem of probation which illustrates the issue much better than the theoretical discussion. When Judge Ugast and I are discussing probation and procedures, if you understood it all, some points in the conversation become very, very technical and complicated, but the procedures are very important. What happens to the people in real life situations is really the essence of what we are trying to do in terms of public safety, so we appreciate your coming forward. We know it is not easy to appear and testify about an experience such as the one which happened to you, so we want you to know that we are grateful to you for coming forward. As I understand it, you are 32 years of age, married, a resident of Washington, DC, and employed here in the city.

Mrs. SMITH. Yes.

Senator SPECTER. And tell us what happened to you back on July 10 of last year.

STATEMENT OF MARGARET P. SMITH

Mrs. SMITH. Well, it was pretty late at night, and I was on my way home on the bus, and I was very tired, so I fell asleep on the bus and missed my stop. Rather than get off two or three stops away, I rode the bus on to a Metro stop, which was the end of the line, because I figured it would be more light, and I could get someone to meet me, and go back home. When I got up there to the Metro station I went to use the phone, and the phone that was there was broken, so I could not call anybody to meet me. I noticed a guy sitting off to the side on one of the benches there, and he kept watching me go to the phones, and I was thinking what should I do. I started walking, because I did not want to stay there, because it was not very well lit and there were no other people around at the time.

Senator SPECTER. You were at the subway stop at this time, underground?

Mrs. SMITH. No; I was up on the street level.

Senator SPECTER. Street level.

Mrs. SMITH. I started walking down the street toward a home, because I was going to try and catch a cab. I figured I would be safer. I thought, walking down the street, you know, out in the open, trying to catch a cab. So I got about a block away, and I noticed that the fellow who was at the subway station was following me. So I kept walking, and then I crossed the street and I looked back, and he had crossed the street. So I started walking a little faster, and I was going to cross back over to the other side of the street and go to an apartment complex that was pretty well lit, and when I turned around and looked he was running toward me, and he had a knife in his hand, and he was reaching for my pocketbook, and he had the knife, and he grabbed it.

Well, then, in the meantime, while we were going down the street, another fellow showed up, and I do not even know where he came from, but then there were two of them. So the first guy that ran up behind me with a knife grabbed me and pulled me back onto the sidewalk, and then the other guy that had come down the street grabbed me also. They took me over, dragged me over to the high school field, as I was near a school at that point, and they took me over there, and I was fighting with the two of them and kicking at them, because one was in front—well, one was on either side of me—and I was trying to do the best I could. Then one of the guys got behind me and the other one lifted my legs, and he knocked me down to the ground, and then they started pulling my clothes, trying to get my clothes off. I was fighting them and trying to, you know, trying to get away, and I was calling for help, and they kept threatening me, and told me if I didn't stop fighting they would really hurt me. One of the guys hit me in the face, and I kept fighting, and he hit me again, and they managed to get my pants and my shoes off, and one guy raped me while the other was holding me down.

So then, when he finished and got up, at first he was holding me down, and the other guy was getting ready to rape me, and he stopped holding me and took my pocketbook and was going through my pocketbook on another part of the field. When he left me there with just this one guy by myself, I was reaching around the ground for my pants, because I had taken some manicure scissors and put them in my pocket, and I got my hands on the scissors and I started sticking him with the manicure scissors. He jumped up and ran over to where the other guy was with the pocketbook, and at that point I grabbed my clothes and was running, and trying to get in my clothes at the same time.

So then I got out into the street again, and one of the guys started following me, but I flagged somebody down, and he assured me he wouldn't hurt me, because I was scared to death at this point, when I realized there was a man in the car, and I said, "Not again." He told me I would be OK, and he took me to the police station. He saw a patrol car, and he flagged a policeman down, and the police called for help. They rode around the area trying to find the two fellows. Then, a week later, the detective who was working on the case called me and said they had arrested one of the guys who had assaulted me. When I got down there they told me that they definitely had one of the guys, because he had tried—he grabbed another young lady at a bus stop, and her father had heard her screaming and ran back to the bus stop, and they held him until the police came.

So the father and I had to go to a lineup, and it was one of the problems, but the second guy, I never got a very good look at him, so I could not recognize him.

For a long time, and still, now, you know, I do not walk out any more by myself at night, because I feel very uncomfortable and very paranoid if someone is walking behind me, because I get very scared. One morning I was going to work and my husband was trying to catch me. I was walking down the street and I heard somebody running behind me, and my heart almost stopped. He got up there and I said, "Don't ever do that again, because I am scared to death, you know, that something will happen again."

It is a bad experience to go through, because you always feel, you know, you will always be scared. When I do go out somewhere I always have someone with me if it is late at night or whatever, because I do not feel safe any more out on the street.

ASSAILANT WAS ON PROBATION

Senator SPECTER. The assailant of yours, who was arrested, according to the information that was provided to me, was arrested the next week while in the act of abducting another woman at knife point at a bus stop.

Mrs. SMITH. He was.

Senator SPECTER. And on August 24 he entered a plea of guilty to armed rape and assault with a dangerous weapon, was later sentenced to 50 years in prison. Is that correct?

Mrs. SMITH. I did not know that. That is the first I heard of that.

Senator SPECTER. That is the information I have, and at the time of the assault on you he was on probation under the Youth Act of 1982 on convictions for grand larceny, unauthorized use of a motor vehicle, and destruction of property, and according to the information provided to me, his probation was revoked on the day of sentencing and was sentenced to 2 to 6 years on the first charge; and second, on the rape sentence that he got from you.

Well, we appreciate your providing that information to us, Mrs. Smith.

I would like now to call on Mrs. Mary Cullman. I understand you are 26 years of age, married, and living in this area. She has consented to come forward to give us information about the burglary of her home by an alleged D.C. probationer back on October 8 of last year.

Mrs. Cullman, we thank you for joining us and appreciate your willingness to testify.

STATEMENT OF MARY CULLMAN

Mrs. CULLMAN. Back on October 8, it was Columbus Day, but my husband had opted to go to work any way, so I was up earlier and decided to treat myself to a nap. While I was sleeping I thought I heard somebody in the bedroom, but I thought I was hearing things, and I noticed it, and a few seconds later I turned over and there was a man in the bedroom on his hands and knees by my bed reaching into my pocket. I woke up very quickly and started screaming for him to get out, which he did.

After he was gone I realized that he had taken my engagement ring, which had been sitting on the night table. The detectives arrived, and I was fortunate in that my ring was recovered about a week later. I had to go to subsequent lineups, two of them. I identified Mr. Wright and I received a letter just a couple of weeks ago saying that he had pled guilty to four of nine charges.

As far as the effect, my initial reaction was that I am very, very lucky that nothing happened to me. Given the circumstances, I was quite certain I would be raped. There I was laying in a bed, in an environment where he knows it is clear no one else is home. As lucky as I felt, and I think I especially felt lucky in reaction to my husband's reaction. I was a bride of just a few weeks. He had brought me to Washington, and this is what happens to his wife. He was extremely upset. Because of that I took the other side and said no, it is behind us. It is not a big deal. I am fine. It is just a ring.

After that, when my husband had gone on his first business trip and I was left alone in the house for the first time I did not sleep all night. I sat up looking at old movies and rereading magazines with all the lights on. To this day the usual noises that one hears during the night—branches, you know, the furnace going on and off—disturb me, and I spend many a night making sure that that noise is not somebody else in my home.

So far as the effects, they have been significant, and probably the most telling of all is that within 2 weeks after this we bought a home. I was not looking for a house until this happened. It happened to be very expensive from my husband's point of view.

I was asked yesterday if I had any feelings on this, and when I discovered that Mr. Wright was on probation I was extremely angry. I am also angry as to the question mark of whether or not he is even in jail at this point. I have tried to look at this subjectively, and I have asked myself why should Mr. Wright stop what he is doing. I cannot come up with an answer. It took my husband a long time to save up for that ring. It took Mr. Wright about 30 seconds to pick it up and put it in his pocket. It is a very lucrative career. Basically, he has been charged with eight counts of burglary.

So, given that, I cannot think of why he should stop doing what he is doing.

Senator SPECTER. Well, the only reason for him to stop doing what he is doing would be if he is in jail.

Mrs. CULLMAN. In my opinion, yes.

Senator SPECTER. According to the information I have, the burglar, Heywood Wright, was arrested and claimed he had a $400-a-day heroin habit. He pled guilty to four burglaries, and he is to be sentenced on March 8, so on the information provided to me, I do not know if he is in custody either. He was on probation for a 1977 burglary in the District of Columbia, and a 1983 heroin possession conviction in Maryland.

Mr. diGenova, I would ask you to make a determination as to Mr. Wright's status. If he is not in custody, it seems to me there is lawful grounds to have him in custody now for revocation of the other probation terms.

Mr. DIGENOVA. I can tell you in a second.

Mr. Chairman, he was held on pretrial detention from the day of his arrest, and he is in jail pending sentencing.

Senator SPECTER. Good.

Thank you very much, Mr. diGenova, both for the information and the results.

I would like now to turn to Mr. David C. Evans, Commissioner of the Probation Division of the Georgia Department of Offender Rehabilitation, a position he has held since 1976. In this capacity, Mr. Evans directs the Georgia Department of Offender Rehabilitation, a population consisting of approximately 6,000 employees, 15,000 inmates, and 100,000 probationers. He holds a master's degree in business administration from Georgia State. And prior to becoming Commissioner, he served as Division Director of Personnel Administration, General Services Division of the Georgia Department of Offender Rehabilitation.

We have asked him to testify here today about Georgia's program of intensive probation supervision.

We very much appreciate your joining us and look forward to your testimony.

GEORGIA DEPARTMENT OF OFFENDER REHABILITATION

STATEMENT OF DAVID C. EVANS, COMMISSIONER, PROBATION DIVISION, GEORGIA DEPARTMENT OF OFFENDER REHABILITATION

ACCOMPANIED BY VINCE FALLIN, DEPUTY COMMISSIONER

Mr. EVANS. Thank you very much, Senator Specter.

Unfortunately, I do have a prepared text.

Senator SPECTER. Fine.

Mr. EVANS. One of the recommendations of the Rand study suggested the need of intermediate forms of punishment for offenders who need more structure and supervision than is now provided under the regular probation.

As mentioned in the study, the State of Georgia recognized the need and implemented an intensive supervisor program called intensive probation supervision [IPS] approximately 2 years ago.

RATIONALE FOR INTENSIVE SUPERVISION

As you see on page 1 of your handout, our primary rationale for intensive supervision was to address our problems of: prison overcrowding, lack of confidence in regular probation, and the need for midrange punishment options short of incarceration.

In addressing the problems, we solicited input from judges, district attorneys, and other key criminal justice figures to develop an intensive probation model which is known as the strictest form of probation in the United States today.

STANDARDS OF SUPERVISION

On page 2 you will note the standards of supervision:

Five face-to-face contacts per week to include nights and weekends;

Employment verification, once per week reviewing pay stubs, once per month on the job site, and additional contacts by telephone if necessary;

Curfew restrictions which limit the offenders' movement outside their home during certain hours;

Law enforcement notification of all offenders under intensive supervision with requests for their assistance in providing additional surveillance;

Special messages on the computerized law enforcement network which requests that law enforcement agencies contact the probation officer if the offender has been arrested or under suspicion for a new crime;

Mandatory community service of 132 hours. This means performing various projects in the community other than their regular jobs, like picking up litter, repairing homes for the elderly, and building playground equipment in public parks; and

Unannounced drug and alcohol screening for potential abuse of drugs and alcohol.

As you will note on page 3, once the standards of supervision were developed, we decided to use a team approach with one person specializing in surveillance functions, and the other in court liaison, counseling, job placement, and resource referral. These are referred to as intensive teams. Each team would supervise no more than 25 probationers.

RESULTS OF PROGRAM

What are the results thus far?

You will note on page 4 that 1,339 offenders were placed under IPS through October 1984. We are able to show 6-month, 1-year, and 2-year revocation and absconding rates, ranging from 6.8 percent for those tracked 6 months, to 24.3 percent for those tracked 2 years.

As depicted on the pie graph at the bottom, the overall success rate is 77 percent.

On page 5, please note that among those who have failed, we have revoked: 9.0 percent for technical violations—not reporting, failure to pay fines, et cetera; 9.6 percent for new crimes; and 29 percent for absconding.

NEW CRIME DATA

Of particular interest to this group may be the new crime data in comparison to the data provided in the Rand study. If you will look on page 6, you will note that among those who committed new crimes, the large majority were alcohol and drug or property related.

We have been very fortunate to have only 8 cases in our 2-years experience who have committed crimes which may be categorized as a violent crime. You will note at the bottom of the page that they are: four simple assaults, one simple battery, one aggravated assault, one terroristic threat, and one obstruction of an officer.

COST OF IPS PROGRAM

Also, of particular interest is the cost of a program like IPS. You will note a cost comparison on page 7: prison, $29.63; regular probation, 75 cents; and intensive probation supervision, $4.37.

I should also mention that in Georgia the entire cost has been funded by a probation fee—a user's fee of $10 to $50 per month, which may be imposed on any probationer in Georgia at the discretion of the court.

On the last page you will note some figures which provide information on other benefits in dollars which are often overlooked as additional advantages of alternatives to incarceration, such as taxes, restitution to victims, and fines.

We would now like to field any questions you might have.

PROBATIONERS PAY COST OF PROGRAM

Senator SPECTER. Who pays the fee?

Mr. EVANS. The user, the probationers throughout the State. A judge can institute a probation fee of $10 to $50 on each individual probationer per month.

Senator SPECTER. And if the probationer does not raise the fee, that means he goes to jail?

Mr. EVANS. That would be the discretion of the court, sir. We would recommend it over a period of time, if that fee was not paid, unless there were some circumstances which indicate otherwise.

Senator SPECTER. Has the issue of incarceration on the default of paying the probation fee been challenged? It sounds a little bit like some of the aspects of debtors' prison. If a person is entitled to probation it seems to me that ought to be an objective determination, not tied to whether he can pay some cost involved.

Mr. EVANS. I don't know if it has been litigated, Senator. We have never had a challenge to it, so I do not know of any challenge to it in Georgia. Perhaps I could make two other comments.

Mr. FALLIN. We have had no litigation thus far in terms of the probation fee. Some recent court decisions have come down from the Supreme Court related to that of revoking someone for inability to pay. It is certainly a question. We do have to prove that they purposefully did not pay before we could revoke them. Thus far we have not had any——

Senator SPECTER. Has anyone purposely not paid? It seems to me that would be an unlikely consequence to avoid paying $4.37 a day, which are your daily charges, with the alternative being incarceration.

Mr. FALLIN. Your question is, has anyone intentionally not paid that we are aware of?

Senator SPECTER. Right.

Mr. FALLIN. At this point, Senator, I am not aware we have had people who have been revoked for not paying that fee.

Senator SPECTER. People are glad to pay for probation?

Mr. EVANS. So far, yes, sir.

Senator SPECTER. The defendants are glad to pay for probation, the victims are not.

Mr. EVANS. In Georgia we are a little different from the Rand study. We have doubled funding on probation over the last 3 years. We have increased the staff over four times, and at the same time, of course, we have built many, many prisons. We are one of the few States who have continued to build prisons. We try to make a valid approach and not focusing our dollars in one area. That is the end of my comments.

Senator SPECTER. Thank you very much, Mr. Evans.

METHODS OF SURVEILLANCE

Are you familiar with some of the reported surveillance systems where probationers are tied electronically to terminals in the corrections center?

Mr. EVANS. I am familiar that some of them are in effect. We do not carry that out in Georgia; no.

Senator SPECTER. How about some of the systems where periodic telephone calls are made to the probationers' homes? Do you do that?

Mr. EVANS. Yes, sir; we do that.

Senator SPECTER. How does that work out?

Mr. EVANS. Under the intensive program, they had better be there when we call them. If not, that is a violation.

Senator SPECTER. How frequently do you find violations of that?

Mr. EVANS. Vince, do you know any?

Mr. FALLIN. I think he misunderstood that question. We utilize telephone calls for followup calls. We do not have the automated systems that others have. Florida uses it, I believe, and the State of Oklahoma uses it.

Senator SPECTER. How does it work?

Mr. FALLIN. As I understand the system, there is a computerized central location. The numbers of the probationer's home phone number are in the computers, and set to call at certain random hours during the evening. The probationer is supposed to be there to answer the phone within 10 seconds and picks up the phone, and they verify that, at least with one system, through voice. Other systems have small bands that are placed on the box near the phone to verify that that is in fact the person near the phones.

Senator SPECTER. But you make the phone calls manually?

Mr. FALLIN. Yes; personally, and home visits.

Senator SPECTER. How does it work? Do you find on most occasions that the probationers are there?

Mr. FALLIN. They had better be.

Senator SPECTER. What are your findings?

Mr. FALLIN. We are finding that they are there, yes, sir.

Senator SPECTER. How many misses does it take to revoke probation?

Mr. FALLIN. Normally on a curfew violation, what would happen would be up to the probation team supervisor, if it was only a curfew violation they would find some other way of tightening up, either lifting the curfew from 8 o'clock to 4 o'clock or giving the person additional community service hours. If there was a curfew violation over a couple of times, then they are taking these people back for a technical violation of their probation.

I might mention that not only in our State do we have the intensive program, but we have other intermediate options short of prison that are even more strict than regular probation, that can be used—halfway houses, referred to as conversion centers. Also a shock incarceration unit, for a 90-day probation, to hopefully get their attention.

PROBATION GRANTED TOO OFTEN

Senator SPECTER. Mr. Evans, you have heard the testimony of the Rand findings. Do you think that probation is granted too often in this country?

Mr. EVANS. Pardon me.

Senator SPECTER. You have heard the findings of the Rand Corp. Do you think that probation is granted too often, say, in the State of Georgia?

Mr. EVANS. In the State of Georgia, I do not think so. We do have a very balanced program.

Senator SPECTER. Do you think you have tough judges in Georgia?

Mr. EVANS. Yes, sir; we do.

Senator SPECTER. How about the other 49 States and in the District of Columbia; do you think that probation is granted too often?

Mr. EVANS. Looking at some of the types that are probated in some other States, I would say yes.

Senator SPECTER. Too much probation?

Mr. EVANS. For certain types of crimes.

Senator SPECTER. Do armed robbers ever get probation in Georgia?

Mr. EVANS. It is a 5-year mandatory prison sentence in Georgia.

Senator SPECTER. There are lots of ways for dealing with mandatory sentences.

Mr. EVANS. There is not too much plea bargaining in Georgia. There is very little that I am aware of.

Senator SPECTER. Judge Ugast, what is your opinion about sentencing in Georgia?

Judge UGAST. That their program is moving well.

JUDGE UGAST'S RESPONSE TO FINDINGS OF RAND STUDY

Senator SPECTER. Judge Ugast, what are your thoughts on the findings of the Rand study?

Before asking about anything, we asked you to come, really, and talk about the revocation system, which you testified to, and I would only ask you your comments, if you care to make them, but I would be interested in your overall response as a jurist, an experienced jurist in criminal court, the findings of the Rand Corp.——

Judge UGAST. Well, I think the findings are a matter of deep concern to every judge who has the responsibility of sentencing for a felony. I think we have all had a deep concern that while a percentage of individuals in the overall judgment on the type of sentence that is to be imposed, incarceration versus nonincarceration, taking into account many, many factors, that if probation is to succeed, and we have a higher chance of succeeding, requires more intensive surveillance and more intensive efforts in terms of supplying services to the offender, if it is to be successful. I think the lesson to be learned from this, which I am sure all of us feel is either at a lesser or greater degree, is the fact that probation, realistically, to have a chance of succeeding and keep the recidivism rate down, requires as much intensive surveillance and monitoring as possible.

Senator SPECTER. Judge Ugast, would you agree or disagree with what Ms. Petersilia said, that probation is granted according to the findings in the Rand study, because of insufficient jail space to put people in prison?

JAIL OVERCROWDING IN DISTRICT OF COLUMBIA

Judge UGAST. My own experience here in the District of Columbia, I would be inclined to say no. I think judges have a reaction that gives them deep concern insofar as they have to place people in jail where they know there is overcrowding, and they know the resources to have a kind of program to help that individual, if that individual happens to be one that is able to be helped in some fashion, it is a deep concern that causes you to cringe, but I do not think in the District of Columbia that has been a factor in sentencing.

Senator SPECTER. You cringe, and then sentence.

Judge UGAST. Yes, sir.

Senator SPECTER. What is going to happen to the jail overcrowding now that the courts have changed their bail revocation system? There are 36 new inmates that would not have happened without the rule change.

Judge UGAST. I think the resources are highly limited, and it is a very, very serious problem.

Senator SPECTER. Mr. diGenova, what are your considerations of the Rand study?

MR. DIGENOVA'S REVIEW OF RAND STUDY

Mr. DIGENOVA. I think they are an eloquent testimonial to what us in the criminal justice system have known for a long time. I think this gives us an idea for us as people who function in this system every day who realize that when victim trauma goes unnoticed by the system, it is not trauma for just the single incident. We have heard testimony today that people are living now long after the events with the sense of fear and sense of violation, not only of their person, but their houses. That seems to me to be significant when we look at what the Rand study says, that 51 percent of all those rearrested were convicted, and 34 percent of those were sent to prison. Of that control group, of the 16,000 that the Rand study recorded, I think anyone looking at the Rand study has to say that it says three things:

No. 1, that probation, in order for it to be effective, and that means to me only one thing, protecting the public from other crimes like probationers, must be more intensive and involve the kind of surveillance that we have heard testimony about today.

No. 2, with regard to probation revocation, it seems to me that individuals who get a bite at the apple, if they deserve it at all, that one bite, and it ought to be the end of the road, it ought to be prison after that, and if we need to build more prison space because of the revocations going on, so be it.

Senator SPECTER. On the subject of the prison issue, what effect are these new rules of revoking probation going to have on the already overcrowded prisons, Mr. diGenova?

ADDED PRESSURES TO OVERCROWDING

Mr. DIGENOVA. Well, it is clear that the city has been attempting to deal with that by shifting individuals back and forth. It appears to me that as we increase the use of pretrial detention, and with the conviction statistics going up, we had over 10,000 convictions in 1984, we are going to have an increasing real pressurized need for increased prison and jail space, and there is no way to get around it.

Senator SPECTER. And do you think the new system for revoking probation in the D.C. superior court is going to add to that problem, obviously?

Mr. DIGENOVA. I think so, Mr. Chairman. In less than a month, we have had 80 cases already, with 45 people being incarcerated. If we continue at that rate, that is 1,200 extra people to be incarcerated, pending some sort of final disposition.

CLOSING COMMENTS

Senator SPECTER. Thank you very much.

Well, thank you very much, ladies and gentlemen. Thank you especially, Mrs. Smith and Mrs. Cullman. We are grateful to the Rand Corp. for the findings.

I believe that there are too many people being placed on probation today, and my sense is that across this country people are being placed on probation where they really ought to go to jail, because there are insufficient jail facilities. I believe that condition exists in the District of Columbia, and it is something that we have to act on.

I do think that this is an unusual hearing, in that we have a bright spot as well as a lot of gloomy ones, and the bright spot is that the judges of the superior court have changed the system of revoking probation, and there have been, since January 28, in the course of 3 weeks, at least 36 criminals—who were on probation as a matter of grace—who are now in detention and they cannot commit any more offenses while they are in detention. So at least, the one facet of revoking probation has been materially improved in Washington, DC, and I think that is a very positive step.

SUBCOMMITTEE RECESS

I want to thank you all for joining us today, and that concludes the hearing. Thank you.

[Whereupon, at 3 p.m., Thursday, February 21, the subcommittee was recessed, to reconvene at 10:30 a.m., Tuesday, March 5.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, MARCH 5, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:30 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senator Specter.

DISTRICT OF COLUMBIA

DEPARTMENT OF CORRECTIONS

STATEMENT OF HON. MARION S. BARRY, MAYOR, DISTRICT OF COLUMBIA

OPENING REMARKS OF SENATOR SPECTER

Senator SPECTER. We will begin the hearing of the District of Columbia Subcommittee of the Appropriations Committee.

This hearing has been scheduled on the issue of a prison and jail situation in the District of Columbia, and is in a long series of hearings which this subcommittee has had on this important subject.

The problems of the prisons have been well known in this community where there has been a problem on heavy use of drugs, a significant increase in violent crime, necessitating very substantial prison space.

We have examined from time to time the issue of construction of a new prison. There have been judges added to the District of Columbia bench which accelerate the prison trial calendars. Changes have been made in the revocation of probation which have been in effect since January 28, which add to the jail population.

The proposed changes are imminent in the rules of the Parole Board on revocation which may be expected to add further to the jail situation, to the problem of prison overcrowding.

I have visited both the District jail and the Lorton prison, visited the Lorton prison on two occasions, and have added substantially in this subcommittee's budget on rehabilitation facilities and expansion facilities in an effort to change the situation where functional illiterates are released without a trade or a skill, and, thereby, finding no surprise when they returned to a life of crime.

We have received cooperation from Mayor Barry and his administration, cooperation from the U.S. Attorney Joseph diGenova. There is a recurrent problem of overcrowding. This is a matter that Mayor Barry and I sat down privately on a week ago today, and have consulted. I have consulted with Mr. diGenova, and I have consulted with the Department of Justice, with the new Attorney General on this issue in an effort to find in a cooperative and coordinated way a solution to this pressing problem.

That's a very broad outline of the situation which prevails today, and I discussed this matter again late yesterday with Mayor Barry, and Mayor Barry has convened his own council earlier today, and at that time has been reported to me that he will have a major policy announcement to make this morning.

I am pleased to welcome the very distinguished Mayor of the city of Washington, DC to this hearing at this time.

Mayor Barry, thank you for joining us, and we look forward to your testimony.

STATEMENT OF MAYOR BARRY

Mayor BARRY. Thank you very much, Senator Specter.

First of all, let me express my deep appreciation for your strong commitment to join in partnership with the District of Columbia to help us to look at and begin to solve a number of pressing problems: jobs, housing, and crime. Certainly the District's criminal justice system is a topic that we have spent a great deal of time on lately.

Just for the record, let me just indicate, as you know the District's criminal justice system is probably the most complex and complicated system in America. Our overall population approaches nearly 65,000 people and city, county, and State functions are conducted at one level. At the same time, our criminal justice system is bifurcated.

Two major functions of our justice system, prosecution and sentencing or determination of what happens to those who are convicted, are not under the direct control of the Mayor or the legislative branch of the District. Although we have cooperation with the U.S. attorney and the superior court, I think we ought to have control of those functions.

That's not the major issue here today, however. What we are faced with, Mr. Chairman, are several factors. One is that technically and legally, as you very well know, those persons tried in superior court on criminal charges, with the exception of juveniles and persons charged with traffic offenses, are legally and technically under the control and custody of the Attorney General of the United States of America.

The Attorney General has delegated most of the responsibility for custody and care of convicted misdemeanants and felons to the Mayor. I, in turn, delegate that responsibility to the Department of Corrections.

Also, police responsibility is divided between the Federal and District governments. However, the Metropolitan Police Department primarily controls criminal-related law enforcement activities.

Augmenting the police department are the Federal Protective Service that protects embassies, and the Capitol Police, who protect capitol properties.

Notwithstanding the District's uniqueness and division of responsibilities, Mr. Chairman, the philosophy of the Barry administration is that our streets should be safe, our homes protected, and our businesses secure. Safety and protection of this community have been my watchwords.

As with States and the Federal Government, the District is faced with a surge in the prison population and a shortage of prison beds. Both of our sister jurisdictions, Maryland and Virginia, share this problem. Since the District is not solely responsible for the type of cases prosecuted, and since the District has no authority over judicial policies, we feel very strongly, as you do, that the Federal Government has a major responsibility here for financial support that you ordinarily would not find at other city, county, or State levels.

PREPARED STATEMENT

Mr. Chairman, I would like to ask that my entire statement be entered into the record.

Senator SPECTER. Mayor Barry, it will be, and you may proceed as you choose by way of summary.

[The statement follows:]

STATEMENT OF MAYOR BARRY

I am here today to continue our dialogue about how we, together, might best address our mutual concerns about the District's criminal justice system.

As you know, the D.C. Criminal Justice System is probably the most complex and complicated criminal justice system in America. Our city, with a population of approximately 650,000 people, has city, county and state functions. At the same time, our criminal justice system is bifurcated. The two major components of the criminal justice system, that is, the prosecution and the determination of what the sentences will be for those who are convicted, are under the control of the Federal Executive branch and the Legislative branch of the District.

Unlike other states or counties where control of the prosecutorial aspects of the system rests with local authorities, the District has its prosecutorial authority in the U.S. Attorney for the District of Columbia. Our Superior Court judges, who have jurisdiction over local or state laws, are appointed by the President and confirmed by the Senate. Technically and legally persons tried in the Superior Court on criminal charges, with the exception of juveniles and those charged with traffic offenses, are under custody and control of the Attorney General of the United States. The Attorney General has delegated most of the care and custody of convicted misdemeanants and felons to the Mayor, and I have in turn delegated them to the Department of Corrections.

Police responsibilities are also divided between the Federal and District Governments. Our locally controlled Metropolitan Police Department has primary responsibility for control, apprehension and prevention of criminal activity. The uniformed branch of

Secret Service has responsibility for protection of chanceries and embassies, and the Capitol and Park Police control certain portions of National Park land. The Capitol Police are also responsible for certain portions of the Capitol.

Notwithstanding all of this divided responsibility, the philosophy of [illegible] my Administration is that our streets should be safe, our homes protected and our businesses secure. Safety and protection of this community have been my watch words. In February 1981, I initiated a 13-point crime reduction program. We have had unparalleled success in decreasing the level of reported serious crime while increasing arrests.

Like other citis, states and the Federal government, the District is faced with a surge of prison population and a shortage of prison beds. Both of our sister states, Maryland and Virginia, share this problem. Since the District Government is not responsible for prioritizing the type of cases prosecuted and since the District has no authority over the discretion or direction of the Judges, the Federal government has more responsibility than you would ordinarily find in a local government. Therefore, whatever solutions are forthcoming, necessarily involve the Federal government.

BACKGROUND

Let me offer some background on how we got to where we find ourselves today. In mid-1984, we developed a ten-year prison population forecast for the District of Columbia. That forecast indicated that the District's inmate population would continue to climb through 1987 and then would begin to taper off. These estimates were consistent with the projected reduction of those age groups within the District's overall population which are likely to engage in criminal activity. The number of crime-prone individuals appears to be holding; however, the actual rate of incarceration has exceeded the projected rate of increase.

Actual growth in the prison population over the past six years (1979-1984) is 47 percent. In order to accommodate this growth, I have added over 1,887 beds during the last 6 years.

Estimates suggested that the incarcerated population housed in District facilities would grow to 5,658 by December, 1984 and rise slowly until 1987. The actual number of persons incarcerated at the end of December was 5,824, or 3 percent over the earlier projections for this period. Over the last two months, however, there have been sharp increases in our prison population. At the end of February, 1985, the population had reached 6,193, a 6.3 percent increase since December, 1984. In fact, the rate of increase has been so sharp that it is now apparent that we must take another look at prison bed construction.

In the last few weeks, we have sought to identify those causes forcing us to exceed our estimates, and we found that many separate actions were combining to place severe pressure on our ability to house those in our custody.

From January to February of this year, total arrests for rape increased by 54 percent; for burglary, by 7 percent; for drug possession, by 3 percent; for assault with a deadly weapon, by 50 percent; and for weapons law violations, by 41 percent.

Furthermore, since the beginning of the Barry administration in 1979, there has been a 20 percent increase in the total number of adult arrests; even with a 21 percent decline in crime over the past three years.

In addition to the successes of the Police Department, there have been other changes within the last few months which are having a profound impact on the prison population.

The addition of seven new judges to the Superior Court, five of whom were assigned to the criminal calendar, three hearing commissioners and ten retired judges has decreased felony case processing times by ~~14~~ 9 percent between November 1984 and January of this year.

In addition to increased arrests in certain offense categories, last summer, I directed an analysis of parole practices which led to a tightening of release guidelines and implementation of new rules of revocation. Those rules require prompt revocation of parole for individuals who violate conditions of their release. These changes have resulted in increases in the number of parolees and probationers returned to jail for release violations. On February 27, 1985, 283 parolees were being held in the D.C. Jail as compared to 214 two months earlier. Also, after the first three weeks of using new probation revocation guidelines, 36 of 44 probationers reviewed were placed in jail.

On the average, District prisoners serve longer terms than persons charged with the same crime in other cities and states across the nation. The District's overall incarceration rate for sentenced offenders is 832 per 100,000 residents. This rate is three times greater than the national average for all states. The rate is also greater than that of all other major cities.

It also is clear that we are facing a drug epidemic. Over the last few months, 60 percent of those arrested were tested and found to have dirty urine. This upward surge has led me to conclude that we need to rethink our forecasting.

The recent two-month population surge and the factors contributing to it suggest that we must look to the addition of some prison beds. The cost to construct such facilities range between $40,000 and $85,000 per bed depending on the security level of the prison. Over and above this, it costs approximately $16,000 annually per bed to maintain each bed.

In addition to initiating a process that will provide additional permanent facilities, short-range solutions to relieve some immediate concerns must be identified. At the same time that resources are being unduly strained by the two-month population surge, the City is facing other unforeseen housing challenges. Recently, the use of a youth center at Lorton with 406 beds was halted by an explosion caused by methane gas from a Fairfax County landfill. While the county has agreed to repair the damage and cure the leak, make-shift arrangements must be made until the projected June completion date. Also, a 400-bed facility which is under construction at Lorton was delayed and is not scheduled to open until April 1, 1985.

These factors have added to the rapid escalation in the number of convicted felons at D.C. Jail, with the number of inmates rising from 2,290 in early December to 2,614 by the end of February. Over 40 percent of the population of the jail is now made up of convicted offenders, as opposed to pretrial detainees who are customarily placed in jails.

Court-imposed requirements on conditions of incarceration at the Lorton facilities limit the movement of prisoners from the jail to Lorton. Furthermore, a court imposed prohibition on double-celling of pretrial detainees at the jail further restricts the District's ability to manage the total incarcerated population.

A number of steps are being taken to relieve the current situation . Some 76 persons who have been granted parole but are still incarcerated because they lacked jobs, will be released and hired in temporary positions by the D.C. Government in labor intensive and building maintenance jobs. By April 1, 1985, the city will open an additional 400-bed facility at the Lorton prison. Also, in cooperation with the federal government, 130 convicted inmates will be moved from D.C. Jail to federal prisons. Additional cell space in other federal facilities will be pursued.

My preference for new permanent facilities would be at Lorton; however, I believe it is unrealistic and not politically possible to urge the Federal Government to pay for additional facilities in Virginia. Already there are some, including Senators' Warner and Tribble and other Virginia elected officials, who want our prison facilities completely removed from Lorton.

Since the U.S. Attorney has said he supports Federal funding for a new facility on federal land, and since the same suggestion has been made by the distinguished Chairman of the District's Appropriations sub-committee, Senator Spector, I, too, join in that direction.

The executive branch is willing to support the construction of a new prison facility in the District on Federal land paid for by federal dollars. The agreement to move forward with a new prison facility in the District comes relunctlantly after a great deal of analysis on what the current situation portends for the future. It was only after thorough review of all pertinent factors that I decided to proceed. I also feel strongly that no part of our city should be left out of the dialogue of what federal land is available, or the determination of the size of the facility.

In conclusion, it is my belief that if elected officials and the community work together in this important crime control effort as we have done for the many issues that have challenged us over the last ten years, we can successfully resolve both our short-term and long-term criminal justice problems.

FORECAST OF PRISON POPULATION

Mayor BARRY. I would like to highlight parts of it.

In mid-1984, the District of Columbia government developed a 10-year prison population forecast. We do this for housing, jobs, and a number of areas. That forecast indicated that the District's inmate population would continue to climb to 1988, and then it would begin to taper off. These estimates were consistent with projected reductions of those age groups within the District of Columbia which were likely to engage in criminal activity. Estimates have suggested that the prison population would grow to 5,658 by December 1984, and rise slowly until 1987. Actual growth was about 47 percent.

Mr. Chairman, as I indicated, during my administration as Mayor, we have added 1,887 beds, including the 400 additional ones that would come into operation by April 1. Also, Mr. Chairman, our annual estimates of prison population growth were fairly accurate in that we exceeded what was projected for 1984 by only 3 percent.

However, over the last 3 months there has been a sharp increase in our prison population.

At the end of February 1985, the population had reached 6,193, a 6.3-percent increase since December 1984. In fact, the rate of increase has been so sharp that it is now apparent that we must take another look at our prison bed construction plans and try to identify the causes of this increase. We found that there were many reasons for this. From January until February of this year, total arrests for rape increased by 54 percent; arrests for drug possession increased 3 percent; arrests for assault with a deadly weapon increased by 50 percent; and arrests for weapons law violations increased 41 percent. We have had a 20-percent increase in total adult arrests since the beginning of my administration in 1979.

In addition, Mr. Chairman, as you have pointed out earlier, we have seven new judges in the superior court. Five of those were assigned to the criminal calendar. Three new hearing commissioners, and 10 retired judges have recently increased felony case processing time by 9 percent; again adding to a surge in our prison population.

Also, Mr. Chairman, I directed, as you very well know, an analysis of parole practices, which led to a tightening of release guidelines and parole revocation procedures.

In February 1985, 283 parolees were being held in the District jail as compared to 214 held 3 months earlier. Also, after the first 3 weeks of using new probation revocation guidelines, 36 of 44 probationers reviewed were placed back in jail. So the recent 3-month surge, and the factors contributing to this, suggests we must look to the addition of some prison beds.

COST PER PRISON BED

The cost to construct these facilities ranges between $40,000 and $85,000 per bed, depending on the security level of the prison. It costs approximately $16,000 annually to maintain each resident.

Also, Mr. Chairman, let me indicate that, contrary to popular belief, the criminal justice system in Washington, DC is not a revolving door. On the average, District prisoners serve longer terms than persons charged with the same crime in other cities and States.

INCARCERATION RATE OF DISTRICT

Also, Mr. Chairman, the city has the highest incarceration rate anywhere in America, 832 people per 100,000 residents. The average rate is about 233 to 260 for most cities, counties, and States. As of today, there are over 2,600 people in the District jail.

We could house 2,800 people at the jail if we were allowed to put two inmates in a cell.

We believe it could work, and it is a common practice in detention centers to house two, three, or four residents per cell, if the space allocated to each person is adequate. On the other hand, Judge Bryant has ruled that we cannot double cell pretrial detainees.

SERIOUS SITUATION AT LORTON

We also have a serious situation at Lorton where 406 beds have been taken out of commission because of a methane gas leak at the Fairfax County landfill. The county has agreed to repair the damage and cure the leak. This will probably not occur until early June or July and places added pressure on the immediate situation.

Mr. Chairman, we need to find a way to move at least 600 of our residents out of our facilities into either military or federally run institutions. Dialog to that end has already begun with you, the U.S. attorney, and with the U.S. Justice Department. As I understand it, Mr. Carlson of the Federal Bureau of Prisons has agreed to take 130 people, starting tomorrow, and we will continue to look at other facilities.

NEED FOR ADDITIONAL PRISON FACILITIES

However, Mr. Chairman, the long-term solution has to be additional prison facilities. As you know, if I had my druthers about it and if I had my preference, we would add additional facilities at Lorton. However, I think it is unrealistic to urge the Federal Government to pay for the construction of additional facilities at Lorton. Therefore, I am prepared to support the construction, on Federal land with Federal dollars, of a new prison.

The only questions are: What will be the size of it, and where should it be located? It ought to be in the District of Columbia, on Federal land, and paid for by Federal dollars, if the District government would commit to pay the operational costs of that new institution.

The facts have changed significantly since we first started this dialog. The number of prisoners has increased and we are faced with the possibility of an order from Judge Bryant to release some prisoners from the District jail. I don't believe this community is prepared to accept the releasing of residents from our institutions before their time has been served.

We met this morning with a number of citizens, and asked them to join in a citywide effort to become a part of the solution to this problem. It is not just a concern of the Federal Government or the District government, or the U.S. attorney, or Senator Specter. It is a concern that affects all of us. The safety of our community, as you know, is primarily my responsibility as Mayor, and I share that with the chief of police and other law enforcement agencies. All of us live, work, or do business in the city and, therefore, we have a responsibility to join in the solution. I am prepared to take leadership and initiate the solution by making the proposals that I have made today which have been a departure from my previously stated public policy on this matter.

CHANGE IN MAYOR'S POSITION REGARDING PRISON FACILITIES

Senator SPECTER. Thank you very much, Mr. Mayor.

I commend you for your leadership and your political courage in taking the position that you have taken today.

I understand that it is a departure which you have just said, from the position that you have taken in the past, and I understand the considerations which have led you to say that you come to this position with reluctance.

I commend you on your decision today, and your announcement today, because I am convinced that it's the correct stand for the District of Columbia given for very serious problems which face this city, and which face all the cities and all the States in this country.

As you and I have talked about, Mr. Mayor, both privately and publicly, it is my hope that the District of Columbia will be a model city for the Nation, as a city in the leadership role to point the way for what ought to happen in America's major cities. And there is no city which is a bigger candidate for being the model city than the Nation's

Capital. where the President resides. where Congress resides, where foreign officials come. foreign dignitaries, and a great influx of American citizens, U.S. citizens each year. This ought to be a model city.

This subcommittee, as you know, has been helpful on a variety of lines. The education system, the truancy program, the model program for teachers, merit pay, assistance to mental retardation, mental rehabilitation, and this subcommittee has had a special concern about the criminal justice system, because it is such a major problem everywhere, as we have seen the incident of drugs, arrest, and need to deal with this matter.

COMMITMENT TO BETTER CRIMINAL JUSTICE SYSTEM

Mr. Mayor. I am personally convinced that the American people are prepared to pay for a criminal justice system which works.

The American people are very unhappy about the criminal justice system in existence in this country today, and we have had an example in the Goetz case in New York which shows that the people have totally lost confidence in the criminal justice system, with the polls showing such a high approval rating for someone who takes the law into his own hands. And as more facts are coming out, and as more thought is being given to that process, that issue is turning around, and from the day of the shooting on December 22, I personally took the position that we could not allow the criminal justice system to deteriorate to an extent where people took the law into their own hands. But that's what we come to unless we have the components of a criminal justice system which works.

I have urged, as you know, that there be a national commitment for $10 billion a year for 10 years to deal with this problem of violent crime, in terms of speeding up the process, sentencing, adequate prisons, and rehabilitation where that's realistic. As chairman of this subcommittee, I have tried to add funds to Washington, DC which, on a pro-rata basis, would be the equivalent of that kind of a massive Federal attack, and if we are able to show success here—and later we are going to hear from Mr. diGenova, and Mr. Ben-Veniste, who is working on some of the prison programs, for the expansion of prison programs and rehabilitation—we can show a track record on results. And I think I can go to my colleagues in the Senate, the House as well, to get the kind of funding for a criminal justice system which works. You are under seige with many problems, and you have articulated them totally in terms of increased arrests, more judges with sentencing responsibilities being discharged, probation rule changes.

I have, following our conversation—I think it is appropriate to say at this juncture—talked to the Attorney General Edwin Meese, about the problems, and he is willing to help on the short run. Mr. diGenova will address that subject in a few minutes. Mr. Meese has stated to me that he is willing to work on a cooperative basis with you, Mr. Mayor, the Congress, and this subcommittee, on the subject of a new prison for the District of Columbia, a prison which will be located in the District of Columbia, on Federal ground, and significantly financed by the Federal Government.

I do not think at this time it's possible to draw the delineation of the precise lines of payment for prison.

I have long discussed with Mr. Meese when he was Domestic Counselor, ambitious programs for the Federal Government to help States on prison construction, and when we discussed the matter last Thursday, he said to me that although he was not prepared to agree to broader proposals which I had demanded, he did agree that the District of Columbia was a special Federal responsibility, and he would be willing, as I say, to work on a cooperative basis with you, Mr. Mayor, the Congress, and this subcommittee.

He expressed a word of caution that the matter would have to be submitted through appropriate channels, through the Office of Management and Budget, and the exact formula would have to be determined. But there is that willingness of the Federal Government to assume a responsibility, and to what extent we will have to find within this very important matter, and so I think this is a very significant day for Washington, DC. And it is a significant day for law enforcement in the country, as we tackle the problems in an understanding way, and try to bring the resouces necessary. It is an expensive proposition, beyond any question, to build a prison. But, with the kind of problems we are facing in terms of public safety, I think that is what is necessary.

And I commend you for taking a very tough political stand, and this is only the first step. I understand that full well.

We still have a great many hurdles to overcome as we move down this road. But I think your statement today is the most significant development yet in this matter.

EMPHASIS ON THE CRIMINAL JUSTICE AREA

Mayor BARRY. Mr. Chairman, let me add that obviously this position is not shared by all elected officials in government, and you will probably hear them state some opposition to this position.

However, Mr. Chairman, let me say this is just one step. I intend to take action similar to what I did when I first came into office and found a serious financial deficit, and subsequently spent a lot of time on solving it.

I intend to spend a considerable portion of my own personal time and to redirect the resources of my administration into the criminal justice area. I will not limit my focus to apprehension and incarceration, but I intend to put together a very high level working group that will look at the prevention side to try to determine what we can do in this city, as a community, to stem the growing tide among young people who engage in criminal activity. Also, I will look at our juvenile justice system, which appears not to be working very well, either here or across the country, since most of our adult prisoners start in the juvenile justice system. There is a flaw there.

I talked to the superintendent of schools this morning at our meeting, and she intends to work very closely with us, because a number of young people between 6 and 17 who attend our public schools, have had encounters with the justice system. Nearly 3,200 arrests of juveniles occurred last year, and that does not include contacts that did not result in incarceration.

We intend to spend a lot of energy in this administration on criminal justice improvements now that we have gotten our finances in order, and our economic development programs are moving.

I am going to make a major announcement about jobs in about 2 or 3 weeks, which I think will give young people something to do rather than stand on the corner.

I want to thank you for your attention and focus on this area. It has been a problem, and in some instances we have been unable to agree on solutions, but I think we now have the framework for both short-term solutions and long-term solutions. Also the leadership has to be in front of the opinion polls and curves instead of behind them by demonstrating tenacity which I am doing. It was not an easy move, but we made it.

Senator SPECTER. I agree with you. Leadership does have to be ahead of the opinion polls. We may be ahead of the curve in what we are doing here, and I will supplement what I said in one respect, and that's that I applaud your suggestion on crime prevention with juveniles.

These are programs I have been concerned with, as chairman of the Juvenile Justice Subcommittee, and I believe there is balance in what we are doing in the District of Columbia prisons with our efforts to rehabilitation.

I did not agree with the experts in the 1950's and 1960's, when they said that rehabilitation was the only way, and tough sentences for tough criminals were inappropriate. And I do not agree with the experts today who have totally rejected rehabilitation.

I believe that rehabilitation has a significant area. When you deal with juvenile offenders, second offenders, and we have done that, in looking to have training, literacy training, job training, that we do not release functional illiterates without a trade or skill. And we have made that commitment on funding for the District jail, and if that's unsuccessful and the criminals become career criminals, three-time losers, then I think it is fair at that juncture to throw away the key, but only through efforts where rehabilitation and prevention have failed. And I think that is a fair and balanced approach.

CLOSING REMARKS OF MAYOR BARRY

Mayor BARRY. Let me just add finally, from my point of view, I don't get the impression that this community has moved to the point where it has lost faith in our criminal justice system.

It is frustrated by it, but it is not at the point where I hear significant concern that the system has completely broken down, thereby justifying citizens taking the law into their own hands.

I think that may be true of some other places, but here we are ahead of that curve.

I think we could continue to work diligently to stay ahead of it. by relieving some of the frustration with our system. There is a view among a significant number of citizens in the District of Columbia. that they want longer sentences. and more people incarcerated. I think we should have a balanced approach while ensuring that our city remains safe.

We want this system to work. and that's why I am going to spend a great deal of this administration's bureaucratic time. including my personal time. in attending to this important issue.

Senator SPECTER. Thank you very much. Mr. Mayor.

Mayor BARRY. Thank you.

OFFICE OF THE U.S. ATTORNEY

STATEMENT OF HON. JOSEPH DIGENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA.

INTRODUCTION OF WITNESS

Senator SPECTER. I would like to turn now to U.S. Attorney Joseph diGenova. We welcome you here, Mr. diGenova. Thank you for your cooperation, leadership, and hard work on this issue. And I know that you have been actively engaged in the course of the past several days on an extensive basis in efforts to try to help solve the short-range problems of prison overcrowding. And I look forward to the information which you can bring to the subcommittee at this time.

COURT ORDER LIMITING PRISONERS AT DISTRICT JAIL

Mr. DIGENOVA. Thank you for inviting us here to be with you on this beautiful morning, Mr. Chairman, to discuss with you a far less pretty subject, our teeming D.C. prison population.

As we meet today, a judicial order of the U.S. District Court for the District of Columbia limiting the number of persons incarcerated at the District jail may be being signed.

Such an order would climax approximately 10 years of litigation between the District of Columbia and its inmates involving the issue of prison overcrowding.

While the United States of America has never been a party to that litigation, its public articulation on the need for additional prison space for the District of Columbia has been of longstanding. Indeed, all of my predecessors have favored the construction of additional space for quite a few years.

Practically, such a court order would mean that convicted criminals in this city may no longer be imprisoned because there is no place to commit them. With a city criminal justice system already to the breaking point, it would force a crisis and danger to citizens and visitors to the Nation's Capital.

Even without the additional burden of such an order, which I hope will not be signed, because I think it would be unnecessary over the next few days, we are in a state of crisis.

The logic is very simple. Judges have been imposing terms of incarceration in appropriate cases, and I might add, that judges have not been indiscriminately sentencing felons, either felons or misdemeanors. They have been incarcerating those who need to be incarcerated, and neither I nor the Department of Justice has a policy of incarcerating everyone who is convicted of a crime.

We are not engaged in undifferentiated hardnosedism without any concern for the nature of the offender, the victim, and the system.

The number of such cases of incarceration, however, has been rising. Overcrowding is the natural function of static prison space, greatly increased criminal case filings, tougher sentencing laws, and the proper sensitivity to the public safety by the courts.

While I deeply regret the historic recalcitrance of the city to build more prison space, I am encouraged, delighted, pleased, and indeed, exhilerated that the Mayor has expressed his wish to build such space as soon as possible.

ASSISTANCE FROM FEDERAL GOVERNMENT

To iterate once again, the Federal Government remains willing to assist the District of Columbia in the matter of shared concern affecting, as it does the citizens of our city, and insofar as they are guests in our Nation's Capital, citizens of our Nation, and indeed, of the entire world. That assistance offered is both short- and long-term in nature. In the short-term, I can report, as His Honor the Mayor has already on the record, that as a result of negotiations between myself, you, Mr. Chairman, Mr. Meese, Mr. Carlson, and Mayor Barry, that the Bureau of Prisons has agreed to take 130 D.C. prisoners immediately for transmittal to various Federal institutions throughout the country.

I might add, that those 130 prisoners are in addition to the 1,400 D.C. prisoners who are currently doing time in Federal facilities around the United States.

We realize, of course, that this is but a stitch in a hemorrhaging prison system. Indeed, the Federal system itself, as you know, Mr. Chairman, is already 32 percent above rated capacity. Long-term, we repeat, that the administration, as you have indicated earlier, subject to certain approvals, will support financially in some form the building of a new prison within the District of Columbia and, obviously, I personally will do everything within my power to see that that particular position comes to fruition through the policy mechanisms and the approval mechanisms within the Government, and I am firmly committed to doing whatever I can personally do to see that the Federal Government pays its fair share of whatever responsibilities it now bears for the city and the District of Columbia.

DECADE-OLD NEED FOR NEW PRISON

The crunch, of course, is what to do between then and now. The wolf is at the door, but this wolf wants out. To cope with this emergency, Federal agencies of the Bureau of Prisons, to the Department of Justice, to the Department of Defense, will try to provide additional space, which is needed in the interim to house prisoners safely, humanely, and so that the city may have appropriate time to deal with a decade-old problem.

Our goal must be to incarcerate every convicted person who should be incarcerated.

Our obligation to our citizens will tolerate no lesser resolution.

Thank you, Mr. Chairman.

Senator SPECTER. Thank you very much, Mr. diGenova.

When you said that your predecessors had wanted the construction of the new prison, how far back does it go? Obviously, it predates your term in office, my term in office, Mayor Barry's term in office.

Mr. DIGENOVA. Yes; this is not just a problem which resides with only the current city administration, and I think any fair person would say this is a problem that goes back at least a decade, and responsibility for a number of U.S. attorneys, a number of mayors, and a number of other public officials.

Senator SPECTER. In Pennsylvania, legislation was passed in 1965 to construct a new facility in the eastern area of Pennsylvania, and there could be no agreement on placement except for New Jersey, and before any action could be taken, the whole theory of penalogy changed, and the size of the jail was changed, the location was changed, and it never got off the ground, notwithstanding the appropriation. That's a 20-year span.

Does this problem go back that far, Mr. diGenova? You say more than a decade?

Mr. DIGENOVA. I think it does, Mr. Chairman.

Senator SPECTER. I want to know how longstanding a problem we are solving.

Mr. DIGENOVA. I think it is a decade old, Mr. Chairman. I think you can say that. The surge in prison population has been coming for quite sometime. It has been very visible, and if one were simply to track the number of arrests for serious crimes, it was readily apparent that we were headed toward this unfortunate situation all along.

PREVENTING PROBLEMS CAUSED BY RELEASING PRISONERS

Senator SPECTER. Well, Mr. diGenova, I hope the Federal judge does not sign an order releasing prisoners.

My own belief is that that's not the answer. We have seen those around the country, we have seen the release of 613 inmates last year, we saw enormous problems which were spawned in connection with other committee assignments, I visited Rykers Island for the Crime Caucus, and got very deeply involved in the problems caused by release of those individuals. So I hope that that will not be done, and if it is done, there will be an appellate pursuit, because the answer is not the release of prisoners, because of this kind of problem in jails.

I am not saying it would ever be, if there was no response, but I am saying that this kind of good faith effort by Federal and city officials is a very significant factor.

I offer that suggestion to you at this time, and I think it is important for the public to know the concerns which all of us are expressing on the subject.

Mr. diGenova. Well, Mr. Chairman, let me just say that no one is more committed to trying to find an effective resolution to this problem than I, and indeed, I have, for a considerable period of time, urged cooperation and responsibility on the part of the Federal Government for some of the burden in this instance.

It is clear to me that the police are doing their job, prosecutors are doing their job, the judges are doing their job, and that we have a little glitch here, and it is that the Corrections Department is doing its job as best it can, given the limitations of time and space. And I think that we now have crossed the rubicon, and we have gotten to the point where everyone now agrees that the solution is not just bricks and mortar, but a kind of bricks and mortar at a specific location. And I think having come to that point, we now as a group, I think, can find a good public policy resolution to something which is very, very serious, because as you said, nothing would be worse for undermining public confidence in the criminal justice system.

Wholesale release into the community prematurely of those who had been duly convicted and sentenced by judges in this jurisdiction back out into the community prior to the time of an appropriate sentence would be wrong, and I will do everything within my power to assist this committee to prevent that.

Senator Specter. Thank you very much, Mr. diGenova.

I appreciate all your hard work on this project.

Mr. diGenova. Thank you, Mr. Chairman.

Council Judiciary Committee

STATEMENT OF WILHELMINA ROLARK, CHAIRMAN

OPPOSITION TO NEW JAIL WITHIN DISTRICT

Senator SPECTER. In a moment I am going to call on Mr. Richard Ben-Veniste, who has been serving as a volunteer on work in this prison, but I am advised that the chairman of the Council Judiciary Committee is with us, and may want to express a point of view.

We have not had Councilwoman Rolark on our witness list, but we will be glad to hear from her if she would care to say a word or two. Would you care to say a word? Only if you would like.

Mr. Lee told me of your potential interest, and I want you to know that we are interested in your view to speak, if you wish to.

Ms. ROLARK. Thank you for giving me this opportunity. I have an opposite point of view, but as lawyers as we both are——

Senator SPECTER. I understood you did, and notwithstanding that, I would like to hear you.

Ms. ROLARK. Well, I am absolutely opposed to the construction of a new jail within the vicinity or within the confines of the District of Columbia, Senator, because, No. 1, we are an urban jurisdiction, and we are congested, and, of course, we have the same problems that you are as familiar with in Pennsylvania, that no one wants the jail within their confines. But it seems to me that over there at Lorton, where we have large numbers of acreage, that if it is needed to have an expansion of our facilities, that would automatically be the logical place to put a jail.

However, I do come from the education at the Benson school, and at this time I would thank you really for the work you are doing in education within our facilities, and I do think that's the answer.

You can build a lot of jails. Eighteen hundred more beds have been built during the Mayor's administration, which is short, and now we are on the verge of building bigger and better jails.

I do feel the path that you are engendering in terms of updating and upgrading the type of education that is given in our facilities is actually the real path. I support you wholeheartedly in that.

I am depressed to find that in the Federal budget, the Job Corps is being deleted. In the District of Columbia, the particular Job Corps Program which is in my district, has afforded training opportunities to over 1,000 youths.

These youths, who are dropouts, and not encouraged to stay in the system, will become our future criminals.

So we do have to work on this in a broader-base manner. I am going to be working very hard on the Judiciary Committee, which I do chair, to cite alternatives. We have a sight selection before us, and we have our version of the Youth Corrections Act.

I think we have got to encourage the community to express their views on all of these things, because, as Mr. diGenova said, it is not a District problem we are looking at. Bigger and better jails is not the only thing we have to look to as an answer.

Senator SPECTER. Thank you very much, Councilwoman Rolark. I have great regard for the contributions which councilwomen make to the city government. I have one at home. If she found out that you weren't given an opportunity to express your view, I might have some explaining to do. I think your testimony is very important, that it be on the table now so that it is apparent that there are differing views on this subject, and differing views will have to be taken into account. Mayor Barry and I are trying, and Mr. diGenova, are all trying to have a balanced approach, as we look for education and rehabilitation, as well as the tougher line of incarceration, and proposals have been made to eliminate the Job Corps. But the Congress has not yet responded, and there are many of us who are interested in keeping the Job Corps, and I am one of them.

We appreciate your views, and we will be talking to you further, councilwoman.

Ms. ROLARK. Thank you.

ADVISORY COMMITTEE ON EDUCATION AND REFORM

STATEMENT OF RICHARD BEN-VENISTE, CHAIRMAN

EVALUATION OF REHABILITATION EFFORTS

Senator SPECTER. I would like to call now on Richard Ben-Veniste who has the title of Chairman of the Advisory Committee on Education and Reform. Mr. Ben-Veniste has been of great help to this subcommittee, and me personally, on his expertise in the criminal justice field, the field of corrections, and the extensive time that he has put into this matter on a volunteer basis.

He is a very distinguished lawyer, commands a very high hourly rate. We are very lucky to have him on a volunteer basis.

Mr. Ben-Veniste, thank you for your continuing help, and I would appreciate it if you would give us a review as to your evaluation of how the efforts are coming on rehabilitation line, the educational line, and the prevention line which this subcommittee has been active in financing.

Mr. BEN-VENISTE. Thank you again for your very generous comments, Mr. Chairman.

I am very heartened by what I have heard here this morning. I think that the construction of the new facility is an integral part in the overall problem-solving process.

I agree that there is a need for a new facility to end the musical chairs, disruptive kind of atmosphere, when there is a requirement to transfer for whatever reason, from one institution to another that does a disservice to the stability necessary to give the new programs, which we are trying to implement, a valid chance.

As regards those programs, when last I appeared before this subcommittee, I was very upbeat about the commitment to innovative education and vocational programs, which Director Palmer and his staff had made. Unfortunately, those programs have not progressed as quickly as I personally would have hoped.

I have expressed my concerns to Director Farmer, who has met with me on various occasions, and we believe that you are in a position to correct reasons for the delay, and I am hopeful that by the next time I have the opportunity to address this subcommittee I will be in a position to enumerate a lot more progress which we had hoped to see by this time.

Senator SPECTER. As I understand it, you are in constant contact with Director Palmer, in terms of analyzing the progress, analyzing the problem areas, and in working to find combinations of solutions to the existing problems.

Mr. BEN-VENISTE. That's correct. Obviously, Mr. Palmer has his hands full on a daily basis, putting fires out. It is a very difficult and challenging job that he has.

I personally am absolutely convinced that Director Palmer's commitment to the implementation of the innovative educational and vocational programs, which we see as part of this initiative, and I think in terms of implementation, that that day will come.

Unfortunately, not as quickly as we all had hoped.

Senator SPECTER. Well, I know that there are many problems aside from the specific line of education and rehabilitation, and we are on new ground with some significant extent, and we have to work it through. And I think it is going to take some time. I really appreciate what you are doing, Mr. Ben-Veniste, because that kind of pursuit of individual problems is something which obviously I cannot do, nor can the staff do, and you have a special expertise, and a unique commitment as a resident of the District of Columbia, and we all do in a sense. But I really thank you for what you are doing, and look forward to your continuing efforts with Mr. Palmer, and are on a cooperative basis as you outline it, and progress is being made. And if the issue is the speed of the progress, that is something we can work with.

Mr. BEN-VENISTE. Before leaving, Mr. Chairman, I would also like to say that I am terribly gratified by the comments of Councilwoman Rolark, who I think hits it right on the nose.

When we talk about prisons, we can't talk about them as the be-all and end-all solution as to the problem of crime. The so-called Specter initiative, which focuses on education and vocational training to give inmates an opportunity to better their lives, to have an alternative other than the resort to criminal activity, to gain a livelihood, seems to me to be the heart of it.

If we can provide a humane, safe environment by way of a new prison facility, I think that our chances of implementing a meaningful educational and vocational program are all the more enhanced.

SUBCOMMITTEE RECESS

Senator SPECTER. Thank you very much, Mr. Ben-Veniste. I appreciate that very much.

Thank you, ladies and gentlemen. That concludes our hearing.

[Whereupon, at 11:20 a.m., Tuesday, March 5, the subcommittee was recessed, to reconvene at 12:20 p.m., Wednesday, May 8.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

WEDNESDAY, MAY 8, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 12:20 p.m., in room SD–138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Lautenberg.

PANEL 1—LAW ENFORCEMENT AGENCIES

STATEMENTS OF:

HON. JOSEPH DI GENOVA, U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA

NORMAN ZIGROSSI, SPECIAL AGENT IN CHARGE, WASHINGTON FIELD OFFICE, FBI

CHIEF MAURICE TURNER, METROPOLITAN POLICE DEPARTMENT

OPENING REMARKS

Senator SPECTER. Good afternoon, ladies and gentlemen.

I regret our late start, but we have just had a vote in the Senate on our budget process. I thank you for coming.

We are going to be hearing today about problems on the subject of drugs and subjects on the Board of Education as part of the hearing process for the District of Columbia Subcommittee of the Appropriations Committee. We are looking toward our appropriations bill this year. We are very much concerned with the problems of drugs in the city as it relates to the quality of life in Washington, DC, and as it relates to problems of law enforcement and the operations of the courts. And we have combined this hearing with some of the problems which come into focus in the Board of Education, the school system, and some of that overlaps the problem of drugs as well.

We are pleased to have again with us this morning, and thank him for his continuing help, the distinguished U.S. Attorney for the District of Columbia, the Honorable Joseph diGenova, and we would like to call on U.S. Attorney diGenova at this time. He is to be accompanied by the Special Agent in charge of the Washington Field Office of the FBI, Mr. Norman Zigrossi.

Gentlemen, welcome. We very much appreciate your joining us and we look forward to your testimony.

Let me ask at this time for Chief Maurice Turner of the Washington, DC Metropolitan Police Department to join us at the same time. I think Mr. diGenova will feel better protected with you on his left, Chief Turner.

Chief TURNER. Thank you, sir.

Senator SPECTER. Mr. diGenova, let us begin with you, if we may.

STATEMENT OF JOSEPH DI GENOVA

Mr. DIGENOVA. Mr. Chairman, with the permission of the chairman, I would like to submit my statement for the record and merely briefly, if I could, simply say that this subcommittee is very much aware of not only the nature of the problem but the efforts which have been undertaken by the District of Columbia authorities and Federal authorities acting jointly to try and deal with the problem and menace of drugs that face this city. And we are very lucky to have had a cooperative working relationship between the Metropolitan Police Department, the FBI, the Drug Enforcement Administration [DEA], and the U.S. Department of Justice.

It has been, in my opinion, about as productive a coordinated effort between State and local authorities and Federal authorities as could ever be.

None of us, however, is satisfied that we have done everything that we can do, and none of us is saying that we do not have more to do and that we are not going to do it. It is safe to say that the problem facing the city is growing and not decreasing. The statistics on the increase in arrests and prosecutions which we presented to this subcommittee before in addressing the needs of the courts and the prosecutor's office are the same now as they were then. The numbers are increasing. The number of convictions is increasing and we are being faced with the problem being addressed at the same time the problem remains serious.

That is only by way of saying that all of us are realists and I know that in terms of Mr. Zigrossi and Chief Turner that we all remain dedicated to doing the best job that each of us can do as a professional to make this a safer, better city so that people like Mrs. McKenzie, who have to run a school system, will not have to worry as much about what happens to the children near a school. I know that without taking up any more of the committee's time that I am prepared, and I know each of these gentlemen is, to answer any specific questions. But I would like to defer, if I might, for a moment to each of them so they might comment.

PREPARED STATEMENT

Senator SPECTER. Thank you, Mr. diGenova. Your full statement will be made a part of the record without objection.

[The statement follows:]

STATEMENT OF JOSEPH E. DIGENOVA

I appreciate this opportunity to be here today to discuss with you one of the most compelling priorities facing the American people.

With me today are Norman Zigrossi, Special Agent in Charge of the Washington Field Office of the Federal Bureau of Investigation, and Carl Jackson, Special Agent in Charge of the Washington Field Division of the Drug Enforcement Administration.

The compelling priority I spoke of is the war against the distribution and use of illicit drugs. The use of illegal drugs in the United States has spread at an unprecedented rate and has reached into every segment of our society. Narcotic sales in the United States have skyrocketed at a rate of $10 billion annually since 1978, grossing $70-90 billion for traffickers last year alone. This upsurge brought the number of U.S. heroin addicts to more than 500,000 for the first time since 1973 and increased overdose deaths by 93 percent from 1979 through 1983. In the District of Columbia, from January 1984 to December 1984, the Medical Examiner's Office reported a total of 140 heroin related overdoses. Already this year there have been 42 such overdoses. This terrible cancer threatens our national character and challenges our moral fiber and it must be eradicated.

Of course, the long term goal of this Administration is to make our society drug free. And the first step in the achievement of this goal is to educate our citizens as to the enormous costs that illicit drug use is inflicting upon our society -- both in terms of real monetary losses (decreases in productivity, increased absenteeism from the work place, and escalating medical costs); and human costs (including destruction of the traditional family unit, unemployment, and an increase in suicide and overdose deaths). To do this, we must change the attitudes of our citizens who experiment with and use illegal or controlled substances. This effort involves a multitude of agencies and individuals working to develop a national awareness concerning the effects of illicit drugs.

Over the past four years the Reagan Administration has launched direct assaults on two distinct but equally vital fronts in the nation's war on drugs, the "supply-side" and the "demand-side." While we as a nation must, and we in the Reagan Administration will, continue to devote additional money and manpower to this war effort in order to eradicate sources of supply and to interdict shipments of illegal drugs before they enter the country, we must also prosecute those who create the demand for the illicit drugs. As Attorney General Edwin Meese, III, recently remarked, even the occasional or "recreational" drug users buying pleasure for themselves are supporting those who are dealing in terror, torture and death. Perhaps Enrique Camerana would be alive today if there were not a market in the United States for the poison that is slowly destroying so many of our citizens. Let me echo the Attorney General's sentiments by repeating what I have been saying for three years: drug users, whether occasional or regular, are stockholders in organized crime. As Charles Blau, Deputy Associate Attorney General in charge of our Drug Task Forces, has said: " A person who utilizes an illegal controlled substance is as much a part of the conspiracy chain as a person who distributes it." It takes customers to make enterprises flourish and profit.

The problem is severe. But let me give equal emphasis to my feelings of hope that, in stark contradistinction to the prior Administration's woeful record of neglect in the area of drug law enforcement, this Administration has put in place the necessary enforcement resources and coherent strategies essential to win this battle.

In only four years, the Reagan Administration has transformed the face of Federal drug law enforcement. The transformation has come through a combination of new personnel, new funding, new energy, new commitment, and a new conviction that the drug epidemic can be halted.

Within a period of a few months, then Attorney General William French Smith and the President announced a series of major initiatives. The full resources of the Federal Bureau of Investigation, for the first time in its long history, were placed fully into the fight against drugs.

The DEA was reorganized and revitalized with new leadership and now reports to the FBI.

The Attorney General also decided that the Federal government must cooperate more closely with state and local governments in the fight against crime, and provide more assistance.

To implement this priority, he directed that Law Enforcement Coordinating Committees be formed in every Federal judicial district, a network covering the entire nation. The committees develop plans to focus all available Federal resources on the worst local crimes, and then work closely with state and local police and prosecutors to combat those crimes.

In October 1982, the President announced the plans to create the Organized Crime Drug Enforcement Task Force Program. The Task Force Program now covers the nation. The goal is nothing less than the destruction of the major drug trafficking rings that have plagued the country for so long.

The 13 Task Forces are a unique effort in Federal law enforcement. They are made up of agencies throughout the government. For instance, from the Justice Department we have the United States Attorneys, F.B.I., D.E.A., and the Marshals Service. From Treasury we have the United States Customs Service, Bureau of Alcohol, Tobacco and Firearms, and the Internal Revenue Service. From the Department of Transportation we have the Coast Guard.

In addition, under a far-reaching initiative of the Reagan Administration, the Department of Defense now is giving valuable assistance to civilian enforcement agencies in a fight against drugs. It includes intelligence information and prompt information on sightings by military vessels and aircraft of suspected drug traffickers heading for the U.S. by sea or air.

President Reagan in 1983 began a program to supplement the Task Forces. It is called the National Narcotics Border Interdiction System -- and is designed to intercept drugs along the entire border area of the country.

The system was modeled in part on the South Florida Task Force, a very successful effort created by the President to combat the heavy flow of drugs into South Florida.

As of December 1984, the thirteen Task Forces had initiated 804 cases resulting in 953 indictments initiating criminal charges against 3,468 individuals. 1,408 individuals have already been convicted and sentenced, and fines, seizures and forfeitures have exceeded $219 million.

In the District of Columbia, the United States Attorney's Office has moved aggressively in both the Superior Court of the District of Columbia and in the United States District Court to meet the challenge of dismantling and destroying those criminal organizations, their financiers and suppliers who prey upon our society through their importation, manufacture, and distribution of illicit drugs. How is the United States Attorney's Office responding to the drug problem in the Washington Metropolitan Area? First, we have developed a multi-faceted approach which combines an aggressive use of the Organized Crime Drug Enforcement Task Forces, the utilization of new investigative techniques, and increased coordination and consultation among local and federal law enforcement agencies. 1/ Before I outline what this office is doing, I'd like to spend a few minutes describing the criminal statutes we rely upon to prosecute drug traffickers in Superior Court and in the United States District Court and then I will share with you some very distressing statistics which dramatically highlight the magnitude of the drug problem we must face together as a community.

Enforcement Mechanisms

In the Superior Court of the District of Columbia, defendants who manufacture, distribute or dispense narcotics, or possess narcotics with intent to distribute them are prosecuted under 33 D.C. Code, Section 541(a)(1) or b(1). The Mandatory

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1/ Our efforts to deal with drug traffickers in the D.C. area have been enhanced through the efforts of the D.C. Law Enforcement Coordinating Committee (LECC). The LECC is composed of the operational heads of each law enforcement agency in the city, and functions as a means to increase cooperation and coordination among its members. Topics of interest concerning drug trafficking have been addressed in detail by members of the LECC's Drug Trafficking Subcommittee, and the dialogue fostered by the Subcommittee has resulted in expanded and improved joint operational activities. Further, to better address the area-wide drug problem, the Subcommittee's activities have been combined with those of the Drug Trafficking Subcommittee of the LECC for the Northern District of Virginia. The full LECC also discusses problems relating to drug trafficking on a regular basis, and relevant intelligence is shared among agencies.

Sentence Initiate of 1981 amended the provisions of the Uniformed Controlled Substances Act (UCSA) to require the imposition of mandatory minimum sentences for particular violations of the Uniformed Controlled Substances Act. With limited exceptions, mandatory sentences are required for trafficking offenses of all controlled substances. The length of the mandated sentences is determined by the Schedule classification of the controlled substance, whether it is a narcotic, and with respect to Schedule IV or V drugs, the quantity of the substance involved in the offense as reflected by its value.

In the United States District Court, drug traffickers are prosecuted under 21 U.S. Code, Section 841(a)(1)(2). The Comprehensive Crime Control Act of 1984 made significant drug penalty amendments under 21 U.S. Code, Section 841. These amendments: (1) raise the maximum term of imprisonment and fines for Controlled Substance Act offenses involving Schedule I or II controlled substances, (2) raise the fines for offenses involving all other drugs and make the double-penalty provision for recidivists applicable after the establishment of prior state, federal or foreign convictions; (3) similarly amend the parallel provisions of the smuggling laws to reflect the increased penalties; (4) provide a new offense of cultivating controlled substances on federal land; and (5) add a new offense of violating drug laws in or near schools.

The Continuing Criminal Enterprise Statute (21 U.S. Code, Section 848) provides for the most rigorous sanctions of any Federal criminal statute directed at drug related activities. It carries a maximum penalty of life imprisonment and a minimum of 10 years -- with no parole in either case -- and fines up to $100,000. It also provides for forfeiture of all proceeds of the specified criminal activity, or of any assets purchased with such proceeds. In the 10-year period from 1970 to 1980, there were only 85 such indictments brought by the federal government. In the last year and a half under the Organized Crime Drug Enforcement Task Force, there were 211 defendants charged with the offense.

The Racketeer Influenced and Corrupt Organizations (RICO) Statute provides other strong sanctions that deal with criminal organizations and their pernicious infiltration of legitimate business. RICO penalties provide up to 20 years imprisonment, $25,000 in fines, and civil and criminal forfeitures. The forfeiture provisions of both RICO and CCE were clarified and strengthened by the Comprehensive Crime Control Act of 1984.

The Explosive Growth of Drug Cases

In 1979 the Metropolitan Police Department referred 19,339 arrest cases to the United States Attorney's Office for processing. Felony drug arrests accounted for just 4% of all felony arrests (310 cases). In 1984 the police department referred 24,861 cases to our office. Felony drug arrests accounted for 31% of that total (3,385 cases). In 1979 drug arrests for both felony and misdemeanor offenses comprised 20% of all arrest referrals. In 1984 that percentage had skyrocketed to 38% (9,454 cases). In 1979 the United States Attorney's Office returned 216 felony drug indictments in the Superior Court. Those 216 indictments constituted 7% of all indictments returned. In 1984 Superior Court grand juries returned 1,985 drug indictments. These felony drug indictments accounted for 45% of all felony indictments returned in the Superior Court. As these statistics make clear, the police department, responding to demands of the people to deal aggressively with drug traffickers, are arresting more and more people and charging them with felony drug offenses. The United States Attorney's

Office has likewise responded to the challenge by developing new prosecution policies which treat all sales of illicit drugs, even single sales, as felonies.

Furthermore, to ensure that drug dealers and members of our community understand how crucial this war against drugs is, the U.S. Attorney's Office has devoted additional resources to the Superior Court Grand Jury Section and has instituted new procedures to indict drug cases on the same day such cases are referred to us by the police. To demonstrate our determination to remove arrested drug traffickers from the community at the earliest practical point, we are utilizing the pretrial detention statute much more frequently to detain pretrial drug dealers who have engaged in an established pattern of criminal conduct.

On the local legislative front, we have worked with the District of Columbia City Council by proposing to increase the penalties for distribution of PCP. The Council, to its credit, responded by enacting this proposal into law. We have also worked with Senator Arlen Specter to gain additional prosecutive and judicial resources in Superior Court to handle the avalanche of new criminal cases, especially drug cases, that are being processed there. Twenty-one new federal prosecutors, seven new judges and six new commissioners have joined the battle.

Indeed, in every ward of this city, in southeast, in northeast, in northwest and in southwest, neighbors have banded together and marched to reclaim their communities from drug traffickers. These citizens, if they were witnesses before this Committee today, would provide the most eloquent testimony on how plentiful drugs are in our city and on how a steady supply of illicit drugs inevitably spawns drug addiction and other drug-related crime.

The actions of our citizens in protesting the loss of their communities to drug peddlers demonstrates why, in words of Attorney General Meese, there can be "no neutrals in this Country's war on drugs."

We must all work together to stem the ever increasing stream of dangerous drugs into the Washington area. While our prosecutive efforts have begun to make a difference in Superior Court, we still have serious problems.

Heroin remains plentiful throughout the Washington Metropolitan Area. It is readily available at the street level in purities from 6% to 6.5%. Prices average $100 per gram (6% to 6.5% purity); $800 to $2,000 per ounce (6.5%); and $5,000 to $15,000 per ounce (70% to 90%). Most street level sellers in Washington, D.C. deal in quarter gram packages which currently retail for $30. While the distribution of heroin in the District of Columbia is controlled by local criminal organizations, these local groups continue to obtain their heroin from trafficking groups and organized crime figures in the New York area.

There is also an alarming increase of heroin arriving into the United States from Nigeria. This heroin arrives in the United States in very high purities, from 75% to 85% pure. Local addicts who purchase such batches of heroin in many cases will not be able to tolerate these purities and may become prime candidates to overdose.

Like heroin, cocaine is plentiful in the Washington Metropolitan Area. Local cocaine distributors travel to Southern Florida and South America to purchase multi-kilo quantities of cocaine. Prices range from $1,800 to $2,800 per ounce (30% to 70% pure) and $35,000 to $65,000 per kilogram (60% to 90% pure).

PCP is an extremely dangerous drug and tragically it continues to be the drug of preference for many young people in our city. Because the drug has such bizarre mind-altering effects on its users, PCP abuse has played a significant role in some of the most senseless crimes prosecuted by our office. Prices for PCP average $15 to $50 per gram and $200 to $300 per ounce.

Marijuana remains easily available in the Washington Metropolitan Area. Prices in the Washington area range from $1.00 to $2.00 per cigarette, $35.00 to $120.00 per ounce, $120.00 to $500.00 per quarter pound and $250.00 to $800.00 per half pound, and $500.00 to $2,000.00 per pound.

While the availability of these drugs for street-level purchase provides a stark reminder of the serious problems we face, I am heartened by the fact that our Organized Crime Drug Enforcement Task Force operations in United States District Court are beginning to seriously weaken and, we hope, will soon destroy many of the drug trafficking organizations that prey on the citizens of our city.

Interagency Cooperation

An important factor in the successes achieved in the drug enforcement arena has been the unprecedented cooperation among law enforcement agencies at all levels of government. We are all committed toward a common goal and utilization of the talents, tools and resources of multiple and diverse agencies to successfully immobilize high-level drug trafficking organizations. The implementation of the Organized Crime Drug Enforcement Task Forces has sparked an investigative/prosecutorial marriage marked with significant success.

Washington, D.C. is in the Mid-Atlantic Organized Crime Drug Enforcement Task Force region. The program overall, and this region specifically, have achieved tremendous strides in dismantling drug trafficking organizations. We are pursuing drug importation and distribution crimes, as well as those violations relating to the financial aspects of drug trafficking.

In addition to the Organized Crime Drug Enforcement Task Force program, there are numerous interagency mechanisms in place to address Federal, state and local cooperation. The first, and largest of these joint undertakings, is the DEA/MPD Task Force.

The DEA/MPD Task Force is headed by a very capable and experienced police lieutenant with an extensive background in drug enforcement in the Washington, D.C. area. This unit primarily focuses on the heroin trafficking activities of the organized distributors in Washington, D.C. Their successes, as I will soon describe, have had a tremendous impact on the heroin traffickers in this city.

Under the direction of the DEA Assistant Special Agent in

Charge, is the Nigerian Task Force, organized to counter the threat posed by organized heroin traffickers transporting high quality, nearly pure, Pakistani heroin through Lagos, Nigeria, and onward into the United States, and in particular, to Washington, D.C. In February 1985, this Task Force culminated a two-month investigation. The investigation resulted in the arrest of two Nigerian nationals and the seizure of five pounds of high quality heroin, worth in excess of $5 million.

The second Task Force unit is the PCP Task Force made up of representatives from DEA, MPD, Fairfax County, Arlington County, Loudon County Police, Prince William County Police, Virginia State Police, Maryland State Police, and the U.S. Park Police. This unified effort of Federal, state and local officers has provided a substantial deterrent to the production and distribution of PCP in the Washington, D.C. metropolitan area. They have effectively utilized DEA's precursor control program to provide evidence of laboratory operations well before the operators had a chance to manufacture their lethal doses of this devastating drug.

The DEA agents and the Task Force officers with their Federal authority have halted the clandestine laboratory operations of many of the major producers of PCP. Through their innovative and dedicated investigative efforts, they have been responsible for sending many of the nation's foremost suppliers of PCP to lengthy prison terms.

There is a third Task Force unit which effectively utilizes the consolidated law enforcement resources of: DEA, MPD, the U.S. Federal Aviation Administration Police, and the Arlington Police Department. This "Mass Transportation Detail" handles the investigative response to U.S. Customs Service seizures and arrests at the Dulles International Airport. They also conduct domestic drug investigations at Dulles and National Airports, as well as follow-ups to Amtrak seizures at Union Station in Washington, D.C. This unit has achieved successes comparable to similar Federal/State Airport Task Forces throughout the country.

The best recent example of the cooperation exhibited in a major drug case here is in the prosecution of the Colombia Drug Racketeering Case. In that case, our Task Force group consisted of two AUSAs working close to full-time; one full-time DEA Agent; two full-time FBI Agents; one full-time Customs Agent; and one full-time IRS Agent. In addition, whenever there was a need for increased manpower for short periods of time, we were able to get an infusion of agents on a moment's notice. For example, in attempting to finish up the tax part of the investigation nine or ten IRS Agents were assigned to the case full-time for several weeks. That investigation resulted in the indictment of fifteen people, seven of whom pled guilty to multiple felonies. Another five defendants went to trial and were found guilty of multiple counts of conspiracy and drug distribution. One RICO case is currently pending against two defendants. The trial is expected to last through the month of April.

The investigation also led to forfeitures and seizures in excess of several million dollars worth of assets related to the drug organization. Using the RICO statute, Organized Drug Task Force members cooperated with law enforcement authorities in eight other judicial districts resulting in investigations and prosecutions of other drug defendants and organizations. Moreover as a direct result of the cooperative nature of the investigation conducted by five different agencies, another indictment was returned in Texas, in which six individuals were indicted for drug distribution, conspiracy to distribute drugs and for tax evasion. One of our Organized Crime Drug Enforcement Task Force attorneys is handling the prosecution in Texas. He was sworn in as Special Assistant U.S. Attorney to handle all phases of this spin-off case. Of those six defendants, two have pled guilty to tax offenses and to either conspiracy to distribute or distribution of drugs. The four remaining defendants are awaiting trial, which will begin in May of this year.

Our ability to disrupt such international trafficking operations has been greatly aided by the Reagan Administration's successful 1982 negotiation of a bilateral agreement with the Government of Columbia for the extradition of accused narcotics traffickers. Preliminary estimates indicate that approximately 74-90 metric tons of cocaine were exported to the United States in 1984. Approximately 75 percent of this supply originated in Columbia.

On March 16, 1985, the United States Attorney's Office obtained the first narcotics trafficking conviction against a Columbia national, Marcos Cadavid, who was extradicted pursuant to the new agreement. Cadavid was one of four Colombians extradited from his native country in January, 1985, to stand trial for narcotics offenses. His was the first case to come to trial in this country. A jury, in a case tried before United States District Judge Thomas Hogan, found Cadavid guilty as charged of conspiracy to distribute cocaine. On April 9, Judge Hogan sentenced Cadivid to the maximum term of imprisonment of 15 years and imposed the maximum fine of $25,000.

As our Task Force operations continue to grow and develop, we will have further significant supply-side victories. We will of course take full advantage of the full range of prosecutive tools available to us. Certain organizational, investigative, and prosecutorial techniques have emerged as particularly adaptable and effective in the high-profile multiagency environment; wiretaps authorized under Title III; the seldom-used, 15-year-old "kingpin statutes" - the Racketeering Influenced and Corrupt Organization (RICO) and Continuing Criminal Enterprise (CCE) statutes have all found their home in Task Force operations.

When our increased use of these statutes is combined with the new investigative and prosecutive tools provided in the Comprehensive Crime Control Act of 1984, we believe we have the means necessary to continue the new national law enforcement effort against drugs.

Let me add in closing that this national effort is not just one for law enforcement. Families, churches, schools, the business community and all institutions in our society have an obligation to fulfill and a vital role to play in turning away people of all ages from drugs. We in law enforcement can do our part, but we need help -- and not just in the form of much needed additonal professional resources. Role models in all walks of life must stand up and be counted in this war on perhaps the greatest threat to our national character. We welcome them to the fight. For in the last analysis, we in the nation's capital can gain little succor from the glib refrain that heroin does not grow here. Our local effort in regard to both apprehension and education must parallel our national commitment to eradication, if we are to succeed in delivering our city from the curse of drug abuse.

I, and the other federal law enforcement officials here, would be happy to answer any questions the Chairman and Members of the Committee may have at this time.

COMMENTS BY MR. ZIGROSSI

Senator SPECTER. There are a good many questions I would like to discuss with you in your ongoing dialog on the subject. But I think first we will turn to the Special Agent in charge of the Washington Field Office, Mr. Zigrossi, for his opening comments and then we will hear from Chief Turner.

Mr. ZIGROSSI. Senator, I do not have an opening statement but I am prepared to answer any questions as to the role that the Washington Field Office plays in the District in terms of our drug effort.

I might say that from the law enforcement perspective, we do have total cooperation at every level within the District, and that has helped our effort.

So, with that, I will turn it over to the Chief, and then again answer any questions that you might have.

STATEMENT OF CHIEF TURNER

Senator SPECTER. Chief Turner, we are pleased to have you here. Let us hear any opening comments you wish to make before we proceed with some of the questions and answers.

Chief TURNER. Thank you, Mr. Chairman.

I too would like to submit my statement for the record. I will not go through it.

I would like to add personally that this is the highest priority of the Metropolitan Police Department. I personally think that drugs are eroding the quality of life more than anything else in this city. It is responsible, in my opinion, for 75 to 80 percent of the crime that is occurring in the city. And echoing the statements of Mr. diGenova, it is a growing problem.

We sometimes become frustrated. We make numerous arrests. In the last 2 years, we have made in excess of 16,000 arrests for drug violations. You would think with 16,000 arrests, that would have some impact on the total problem. But it has not had an impact on the problem, and now the growing phenomenon we see is PCP. My office on a daily basis is encountering people who are high on PCP, having to deal with them in some violent confrontation. It is of the highest priority to me that we continue in the efforts that we have made.

Again echoing what has been said already, the cooperation has been tremendous. I think we get more than adequate support from the Federal authorities, and they pitch in 100 percent to try to solve the problem.

PREPARED STATEMENT

Senator SPECTER. Thank you, Chief Turner. We have your complete statement and it will be placed in the record without objection.

[The statement follows:]

STATEMENT OF MAURICE T. TURNER, JR.

Mr. Chairman, members of the Subcommittee on the District of Columbia of the Senate Appropriations Committee, I appreciate the opportunity to be here today for the purpose of making a statement on illicit drug trafficking in Washington, D.C.

The local problems in drug enforcement are multifaceted. Today, drug abuse has reached epidemic proportions within the District of Columbia. There are nine (9) active drug treatment clinics in our City and all are filled to maximum level. According to our Alcohol and Drug Abuse Services Administration, there are an estimated 15,000 heroin addicts, city-wide. Narcotic related "overdose deaths" have risen from a low of seven (7) in 1978, forty-one (41) in 1979, sixty-two (62) in 1980, one hundred fifteen (115) in 1981, leveled off to one hundred (100) in 1982 and sixty-nine (69) in 1983, and dramtically increased to one hundred forty (140) in 1984. Through March 31, 1985 there have been forty-two (42) deaths. Heroin street purity has risen from less than two percent (2%) in 1978, to a level of more than six percent (6%) in 1984. Most alarming is the fact that during the same time period that the purity has tripled, heroin street prices dropped more than half; thus indicating a readily available supply of heroin.

In addition to heroin, other controlled substances have increased in availability throughout the city. In the past there were only several locations situated in specific areas of the City that were known "street market places" for drugs. Now we see "street market places" cropping up at more and more locations.

Moreover, diversion by licensed practitioners of legitimate pharmaceutical drugs, such as Hydromorphone (Dilaudid) and Phenmetrazine (Preludin), into the illicit drug trafficking market contributes to the problem of drug availability. Dilaudid is used as a substitute for heroin by addicts and also used exclusively by other abusers. Preludin is also used by heroin addicts primarily to extend their high and to increase the effects of heroin.

Cocaine is readily available and extensively abused. In prior years cocaine was abused primarily as a recreational drug and the expense of the drug limited the extent of abuse. However, due to the abundent availability of cocaine and the reduction in price, cocaine has become a leading drug of choice. We now find violators selling heroin and cocaine from the same locations.

The most striking statistics about the increase in the use of cocaine is a report compiled from information received from the District of Columbia Medical Examiner. This report indicates that in 1982, ten (10) people met with violent type death (shot, stabbed, beaten) with the presence of cocaine in their bodies. In 1983 this figure rose to forty-five (45) and in 1984 this figure increased to eighty-eight (88).

Also, during this same time period arrests by the Metropolitan Police Department for drug violations involving cocaine has increased ninety percent (90%) from 584 arrests in FY 1982 to 1029 arrests in fy 1984.

Marihuana is by far the most abused drug and is available throughout the City, and the drug of choice by youthful abusers. It is also the drug most commonly found in and around schools. However, its abuse is not exclusively that of the youth. Contrary to the belief held by many citizens, the possession of small amounts of marihuana is a crime.

A most alarming phenomenon of the local drug scene is the emergence of Phencyclidine (PCP) as a leading drug of choice by the youthful abuser. PCP was first developed as an anesthetic in the 1950's. However, it was taken off the market for human use because it sometimes caused hallucinations.

During the past year, street sales of PCP have greatly escalated. Street locations previously known for the distribution of Cannabis have become market places for PCP distribution. The majority of arrests for sale and possession of PCP involve juveniles and young adults. Most persons arrested in connection with PCP are either under the influence of PCP or suffering effects from current use. Also, they often exhibit violent and unpredictable behavior when arrested.

As in the case demonstrating the increase in cocaine abuse, the District of Columbia Medical Examiner's Office toxicology reports regarding the presence of PCP in decedents at their time of death illustrates the prevelance of PCP abuse. For example, in 1983 there were sixty-five (65) decedents having the presence of PCP in their systems. In 1984, there were sixty-nine (69) decedents having the presence of PCP in their systems.

Also, arrests for drug violations involving PCP have risen over one hundred fifteen percent (115%) from 1047 in FY 1983 to 2231 in FY 1984.

Contrary to popular belief, drug abuse is not solely a problem among the unemployed and disadvantaged. Drug abuse crosses all social, economic, and ethnic lines of society. Neither is the current drug epidemic situation solely a District of Columbia problem. The drug trafficking occurring in the District of Columbia is largely an interstate enterprise. Our investigations reveal that nearly all of the local major narcotic violators who supply drugs, which are sold at street level in the District of Columbia, reside outside the District of Columbia. Likewise, we know that a substantial number of drug abusers who purchase drugs on the streets of the District of Columbia reside outside of the District of Columbia.

Our enforcement measures to combat the drug problem are multiphased. One of our most effective enforcement programs is a Drug Enforcement Administration and Metropolitan Police Department Joint Task Force, established for the purpose of cooperating in the investigation, institution and prosecution of cases involving major drug violators and stemming the flow of drugs into the District of Columbia, as well as dealing with illicit drug traffickers who know no local or state boundaries. This joint program greatly enhances law enforcement efforts in the areas of sufficient confidential funds, frequent rotation of undercover officers, necessary multi-jurisdictional arrest powers and coordinated regional approaches to drug enforcement.

In addition, locally, each of our seven police districts apply their drug enforcement efforts through their vice units and primarily enforce obvious "street deals."

The Morals Division investigates those persons identified as having a more significant role in drug trafficking than "street dealers." The Morals Division implements special investigative procedures such as the use of informants, surveillance operations, conspiracy investigations, diversion cases and clandestine laboratories. Also, within the Morals Division is a Pharmaceutical Drug Diversion Investigative Unit established to primarily eliminate or significantly reduce the illegal diversion of drugs by health professionals licensed by the District of Columbia to dispense, prescribe, administer or handle controlled drugs.

This is one area of drug trafficking which has been significantly reduced. As previously mentioned, Dilaudid and Preludin are the pharmaceutical drugs most often diverted into the illicit market. Arrests for drug violations involving Dilaudid has decreased from 338 in FY 1982 to 124 in FY 1984, and arrests for Preludin violations has decreased from 1331 in 1982 to 672 in 1984.

Moreover, The Organized Crime Drug Enforcement Task Force program has funding available to reimburse local law enforcement agencies for overtime costs and authorized travel and per diem expenses incurred by local personnel who, as a result of a signed agreement, work on a Task Force case. Also, the agreement provides for deputation of local law enforcement personnel as Special Deputy United States Marshals.

The Morals Division is currently engaged in a task force case involving the diversion of licit drugs by licensed practitioners into the illicit street market.

When I assumed office on July 1, 1981, one of my first acts was to establish a Narcotic Task Force whose objective was to attack the street level sales of illicit drugs. Since its inception, the Narcotic Task Force has arrested 8805 people for either sale or possession of illicit drugs, seized $444,619 in cash, 177 handguns, 15 shotguns, 9 rifles, and 32 vehicles. Among those arrested were 80 people wanted in other jurisdictions as fugitives from justice.

Through these enforcement measures, we apply pressure at all levels of the local illicit drug trade.

Fortunately, during the past few years, cooperation between the various drug enforcement units in the Washington Metropolitan Area has been very positive. Representatives from the drug units throughout the Washington Metropolitan Area, formally known as the Narcotic Officers Sub-Committee of the Council of Governments, meet on a monthly basis.

In addition to the joint MPD/DEA Task Force previously mentioned, Drug Enforcement agents from the Washington Divisional Office, where Mr. Carl Jackson is the Special Agent-in-Charge, and Metropolitan Police Department Narcotic Detectives continuously work with each other in joint investigations involving local major drug traffickers.

Also, our narcotic detectives enjoy excellent cooperation and work joint drug investigations with other federal agencies such as the F.B.I., Customs, Postal Inspectors, Internal Revenue Agents and Alcohol, Tobacco and Firearms agents. For example, we have recently concluded a joint investigation with the Internal Revenue Service and Department of Agriculture, which resulted in four arrests of cocaine traffickers. We are also currently involved in three separate major drug investigations in cooperation with the D.E.A. Washington and Philadelphia Regional Offices, F.B.I., Secret Service, Internal Revenue Service, U.S. Customs and Prince George's County, Maryland police department.

Furthermore, I would like to point out that similar cooperation with local law enforcement agencies and federal enforcement agencies exists in other investigative efforts than drugs. For example, a case involving multi-jurisdictional burglaries, primarily from elderly persons, was successfully closed through the cooperative efforts between our Repeat Offenders Project Unit, Montgomery County and Prince George's County, Maryland, police departments, and various federal agencies.

Essentially, the problem of narcotics abuse within our country can be viewed from two perspectives: 1) the supply side and 2) the demand side. Each area is critical to any overall effort in stemming the tide of rampant narcotic abuse and it is equally critical that a proper balance be struck between enforcement and treatment efforts.

How can we effectively combat the drug problem facing this nation and this city in particular? On the federal level, the U.S. Government must encourage and assist foreign governments of producer countries to undertake crop control programs, thereby reducing the production of illegal drugs at the source. For example, our experience at the street level subsequent to Turkey's 1972 poppy ban and Mexico's 1975 poppy eradication programs at the source of the product had a dramatic impact on the purity percentage and ready availability of heroin in our communities. It is therefore critical that the international community focus upon and find better ways to resolve drug issues. We must be able to seize assets derived from drug trafficking, develop better intelligence activities soliciting support from the governments of producer countries. We must work diligently toward the highest possible rate conviction of drug traffickers and the ultimate destruction of their criminal organizations.

Effective coordination and full cooperation among the federal, state and local law enforcement agencies are essential to any effort directed at the importation, manufacture, distribution and sale of illegal drugs within the United States.

Aggressive interdiction and investigation, effective prosecution, stiff prison sentences, seizure of assets, are essential to control drug trafficking.

The community, in aiding law enforcement, must refuse to participate in purchasing illicit drugs. So long as the demand for drugs remains high in the community, the dealer will attempt to sell his merchandise due to the enormous potential for profit. The drug abusing community must decrease its demand. The community must shoulder more of the responsibility. It must support the efforts of law enforcement in joint community programs. The people must not stand silent while drugs invade their communities. Communities must reach out to their neighbors, their P.T.A.'s, their civic groups. Communities must organize programs which encourage people to provide information, anonymously, if necessary, or report the observance of suspicious activities. Examples are the crime stoppers and neighborhood watch programs. An enlightened public, eager for information and guidance, willing to become involved in community problems, and supportive of cooperative efforts with local law enforcement can better protect itself and help to bring this country's drug abuse and crime problems under control.

INCREASE IN DRUG USAGE

Senator SPECTER. Let me take up a first question which Chief Turner refers to, and that is that drug usage is reflected by drug arrests, that drug usage is up.

What are the best indicators to measure the extent of the increase of drug usage?

Mr. diGenova, let us start with you.

Mr. DIGENOVA. Well, Mr. Chairman, obviously arrests and prosecutions are a significant indicator, and I do not believe they can serve as the only indicator. Obviously admissions to hospitals and any kind of statistics from the Public Health Service and other publicly available data on treatment are important, on how many people not being obviously in the criminal justice system are seeking treatment from publicly available facilities. And if my recollection serves me correctly, at least here, as well as around the rest of the country, treatment facilities are bulging at the seams.

So if we are to take that as a partial barometer to the extent of the drug usage and availability, it is significant.

Insofar as arrests and prosecutions are a legitimate barometer, which they clearly are, we are at epidemic proportions.

INCREASE IN FELONY DRUG VIOLATIONS

Senator SPECTER. According to the statistics I have, Mr. diGenova, as to indictments for felony drug violations, they rose from 216 in 1979 to 569 in 1981, 782 in 1983, and to 1,985 in 1984. So almost three times as many in 1984 as 1983 in the Washington, DC Superior Court.

Mr. DIGENOVA. That is correct.

Senator SPECTER. Which is an enormous increase, an enormous increase.

Mr. DIGENOVA. In fact, Mr. Chairman, felony drug indictments last year accounted for 45 percent of all the indictments returned in superior court, and that is almost a 40-percent increase in the original percentage.

ADEQUATE RESOURCES FOR APPREHENDING DRUG SELLERS

Senator SPECTER. And Chief Turner estimates that drug usage accounts for 75 to 80 percent of the overall crime in the city.

Are the resources which are being devoted to apprehending the drug sellers within the District, are those resources adequate?

Chief TURNER. Let me just add a few statements, Mr. Chairman.

The number of complaints that are received by the Police Department, off the top of my head, most of them are generated by drugs, people complaining about drugs. So, therefore, we have to change the number of our people that we have assigned that were investigating drugs full time. We currently have 281 members of the Metropolitan Police Department whose full-time job is to investigate drug trafficking. It is a very tedious, it is a very complicated, and it is a very dangerous assignment for an individual to undertake.

We often get calls that drugs are being sold at such and such an address. Then we have to infiltrate. We have to go and buy the drugs.

So, as an indicator, we have begun to switch resources from other public safety programs to the drug apprehension program to cope with that problem. I am sure that we could always use more resources, but it seems to be a never ending process. The drugs just continue to come into the city.

REPORTING STRUCTURE FOR DEA

Senator SPECTER. Mr. Zigrossi, the DEA reports to you in your capacity as Chief of the FBI Field Office, right?

Mr. ZIGROSSI. No; they actually report to the Director of the FBI, Judge Webster.

Senator SPECTER. I see.

So the reporting is to the FBI?

Mr. ZIGROSSI. To the Attorney General through the FBI, through Judge Webster. We work very closely with the DEA here in the District.

ADEQUACY OF DEA RESOURCES TO DRUG PROBLEM

Senator SPECTER. What is your evaluation of the adequacy of the resources being devoted by DEA to the drug problem in Washington, DC?

Mr. ZIGROSSI. Well, first of all, the FBI has only been in the drug business since January 1982. I personally think the drug problem in the District and throughout the country is all consuming. You can always use additional resources. I could double my resources and still not know if we are touching or scratching the surface.

The FBI is devoting approximately 35 percent of its manpower on resources in the drug business here today. That is on the criminal side of the house.

Now, DEA is a little different situation in that they only have one violation, and that is drugs. We in the FBI have some 240 statutes which we have to investigate.

So I guess my answer is that you can always use more resources. However, it is the top priority in our office. We are expending the resources and, of course, support Chief Turner whenever and however we can.

Senator SPECTER. When you talk about 35 percent of your resources being devoted to the drug issue, are you at liberty to disclose how many men and women that is?

Mr. ZIGROSSI. I am not.

Senator SPECTER. But more than one-third of your resources are devoted to drugs?

Mr. ZIGROSSI. Yes; that is true.

Senator SPECTER. Perhaps we could talk about it off the record in camera to give me a better idea.

Are you in a position to disclose the total manpower allocation of the DEA unit in Washington, DC to the drug problem?

Mr. ZIGROSSI. I am not, sir. I do think that their entire—all of their manpower resources are devoted to drugs at different levels, the street level in conjunction with Chief Turner's people, and at the top level of the drug organizations with us. So they run the whole spectrum.

Senator SPECTER. What impact has there been on the efforts of the administration to interdict drugs coming into the country? Is there any impact that you men see on drug trafficking in Washington, DC, as a result of the stepped-up efforts by the administration to stop drugs from coming into the country?

ACCESSIBILITY OF DRUGS

Mr. ZIGROSSI. It is my impression that drugs are readily available regardless of what the administration is doing or what we are trying to do.

Now, I have seen—my impression is that we are doing a lot better than we were doing 3 years ago or 4 years ago, but that is a very difficult determination to make.

Senator SPECTER. How do you even make that statement or that determination, Mr. Zigrossi? I am not challenging you on it; I am just asking for your basis, if drugs are as readily available as anybody wants.

Mr. ZIGROSSI. Only because the seizures that we make are significant seizures. We are making, for example, seizures like 42 pounds of heroin in New York 3 months ago. Those kinds of things leave me with the impression that we probably are seizing more, but yet, in spite of that, there are still drugs on the streets here in Washington, DC.

Senator SPECTER. So the seizures are up but there is no indication that anybody who wants to use drugs has any curtailment of market opportunities to purchase them?

Mr. ZIGROSSI. Not from my perspective. Chief Turner may be able to enlighten you further.

IMPORT OF DRUGS ON DRUG TRAFFICKING

Senator SPECTER. I would like to hear your comments on it, Chief Turner.

Do you think the effort to interdict drugs from coming into the country has any effect on drug trafficking in Washington, DC?

Chief TURNER. I have no statistical or scientific data on it. It would just be my opinion. My opinion would be the same as Mr. Zigrossi, that the numbers of seizures are up. The data that is disseminated by the DEA in their monthly publications on what they have seized, not only here but around the country, is up. So I would assume that it is having some effect.

I guess the real question is how much was coming in, no one can ever say, so we do not know how successful we are, because we do not have those barometers to measure where we started at. I do believe it is having some success though.

Senator SPECTER. Seizures are up but the drugs are still available to anybody who wants to acquire them?

Chief TURNER. That is correct.

Senator SPECTER. Mr. diGenova, do you have anything to add on that subject?

Mr. DIGENOVA. Yes, Mr. Chairman.

I think that probably each of us is realistic because of the general acceptance apparently in American society of the use of drugs and because there is an ethic out there which deems recreational use to be a somewhat acceptable form of human conduct, that the law enforcement problem is obviously expanded exponentially by that, and it creates serious problems for those of us in law enforcement who are given the responsibility by Congress to enforce these laws.

But there has been something that has happened in the last few months which I think bodes well for the future, and that is the seizures over the last few years as a result of new coordinated efforts between Federal, State, and local officials have, in fact, increased. That is in fact the case. We know that. The number of indictments has increased and the number of major indictments of major drug dealers has increased as a result of the organized crime drug enforcement task forces set up 2 years ago. That is going to have some long-term effect. It is going to take awhile for those to actually fit in and begin to finally destroy various drug organizations.

As you know, we just had a large-scale arrest of Hells Angels the other day by the FBI. Remember that it took 3 years to investigate that case. There are long-term investigations here, but there is something else. Congress with you as one of the individuals involved in the leadership of that fight passed the Comprehensive Crime Control Act in 1984, and for the first time in the last 30 years, we are now locking up pretrial drug dealers who now do not have the opportunity to work inside of their organizations the way they used to. We are using that statute very effectively in U.S. District Court here in the city, and the other Federal prosecutors are as well.

USE OF CRIMINAL ENTERPRISE STATUTES

We are also now, for the first time, having extensive use of RICO, and the criminal enterprise statutes, the so-called drug kingpin statutes which are enabling us, for the first time in history, to seize the assets, the products of these large scale drug enterprises.

One thing we know for certain is most of the drug kingpins never touch the drugs, but they always touch the money. And as a result of Congress' wisdom in expanding the use of RICO and the Continuing Criminal Enterprise in the Comprehensive Crime Control Act, all over the country Federal prosecutors are making extended and increased use of the statutes which have essentially lain dormant for a number of years. I think over the near 1½ or 2 years when we see the increase in the seizures of property, homes, bank accounts, even banks and other institutions by the Federal Government, we are going to begin to see some change in the availability of drugs.

I must say, and I have said this before, the answer to the question are things better, I think they are better. I think the seizures indicate that. But no one is declaring victory. No one, at least no one at this table, is declaring victory or saying that we have won the war. We are beginning to fight and win, but also it is going to take some time, and also if we were not making the effort that we have made over the last 4 years, we would be in a lot worse situation than we are now.

NEW STATUTE ON PREVENTIVE DETENTION

Senator SPECTER. With respect to the provisions of the new Federal statute on preventive detention, you have had preventive detention in the District for some time now, and the legislation passed last year extends it to crimes under the jurisdiction of the Federal system.

To what extent will that be usable against drug pushers nationwide, Mr. diGenova?

Mr. DIGENOVA. Well, Mr. Chairman, as you know, there are certain statutory provisions which are now working their way through the courts which create presumptions of dangerousness for drug dealers who are charged with certain major drug felonies under that statute.

It is now clear from around the country from various judicial interpretations that both the Federal District Court and the U.S. Court of Appeals judges are looking favorably on not only the presumptions, but they are looking favorably on these statutes in terms of using them against drug dealers prior to trial because of the obvious availability of evidence about what these drugs and what the trafficking in these drugs does to communities around the country and to the United States as a whole.

I must say that one thing that Congress did in the Comprehensive Crime Control Act that is enabling us to have a real hammer on drug pushers is the pretrial detention statutes and the increased use of the kingpin statutes.

Senator SPECTER. Are you using the pretrial detention provisions now? Do you have people who are charged with drug sales in detention awaiting trial?

Mr. DIGENOVA. Yes; I do not have any numbers on that this morning, but we have a significant number in comparison to what we would otherwise have had if we had only stuck with using money bond which, as you know with drug dealers, they can make in a minute, and they are gone.

For example, with Mr. Cadavid, the Colombian who was convicted just recently in U.S. District Court, if he had been permitted to post a $1 or $2 million bond, he would have been long gone before his trial.

Senator SPECTER. Were you not able to do that in at least the District of Columbia with the local preventive detention statute before we passed last year's Federal Act?

Mr. DIGENOVA. Not in Federal Court. The Federal Court had ruled it was not applicable in that Federal Court. We could use it in the local courts, but with regard to drug dealers they were given no special status under the local law, and we were stuck with providing them with the same proof requirements that we had to prove, say, in a murder or a rape or anything else. So they were given no special status and, as a result, we were not able to use that local statute as effectively as we might have liked with regard to drug dealers.

Of course, in most of those instances, most of those drug dealers were out on bond from other cases or on probation or parole or work release, so we have been able to lock them up on other grounds other than pretrial detention.

Senator SPECTER. It is your estimate that the provisions with respect to seizures will be an ongoing effective remedy to cut down on drug trafficking in this country?

Mr. DIGENOVA. Absolutely.

Senator SPECTER. So you think that although we are not winning the war now, when we really get rolling with those new remedies, we may be winning the war?

Mr. DIGENOVA. Mr. Chairman, I have to be an optimist because if I did not, I would probably be very depressed.

But the fact is that we are making progress. The fact that the Federal prisons are almost 40 percent above rated capacity and almost the entire number of those people doing time are convicted drug felons, I have to think that in a very given reasonable period of time, the deterrent effect and the preventive effect of having a substantial number of drug dealers locked up, notwithstanding continuing organizations operating, is going to be quite salutory.

OVERCROWDING OF FEDERAL PRISONS

Senator SPECTER. How about the issue of the overcrowding of the Federal prisons, Mr. diGenova? I had planned to take up the sentencing first, but let us come to the prisons since you mentioned them.

How much longer will we be able to sentence drug pushers to Federal jails considering their current overcrowded status?

Mr. DIGENOVA. Well, Mr. Chairman, as you know, the administration has sought to address the problem comprehensively and, indeed, Congress did in the Comprehensive Crime Control Act with various provisions to give excess Federal property to the States and localities. In addition, the Federal Government now has a building program underway which Mr. Norman Carlson, the Director of the Bureau of Prisons, has undertaken and, of course, the Department is foursquare behind that and is obviously seeking funds in its fiscal year 1986 budget for continued expansion of Federal prison space.

Senator SPECTER. My reading of those requests are that they are very limited, Mr. diGenova, and there are not very many spaces available in the Federal prison system.

Do you have a different reading?

Mr. DIGENOVA. Well, Mr. Chairman, I am not obviously representing the Department in terms of expressing departmental policy on where that is going to go. But I think everything is relative and I think we have seen prison expansion in the past 4 years. I think it is going to continue and we are just going to have to see whether or not the rate of expansion is sufficient.

SENTENCING ON DRUG CONVICTIONS

Senator SPECTER. What is the experience recently with the sentencing by the superior court judges or the Federal judges on the drug convictions?

Mr. DIGENOVA. Mr. Chairman, you know it is very easy to take a look at an individual sentence and be, as I have indicated before, dissatisfied with it. And I must say we have had a sentence or two on which we have been dissatisfied. But, generally speaking, the sentences that are being imposed, particularly in superior court, are very, very lengthy. The average felony sentence in superior court is 4 to 12 years which is long by national standards. Drug dealers are getting a goodly amount of time in superior court.

In U.S. District Court in the past, there were some problems. We had one case recently where a particular sentence was felt by many in law enforcement to be relatively low, but that sentence was really aberrational when you look at the long-term sentencing of Federal judges in this district.

We had a 30-year sentence in a PCP case involving a former lawyer, Mr. George Gates. We have had 20-year sentences imposed, a 15-year sentence which was the maximum imposed on Cadavid. We are going to see and have seen for sometime over the last 3 years an increase in the terms of imprisonment given by judges in both courts, and we obviously on occasion have a sentence which we consider aberrational and with which we do not agree. That is not uncommon given the independence of Federal judges and their discretions.

But, as you know, the Comprehensive Crime Control Act of 1984 is going to establish minimum determinate sentences which judges must impose unless they give written reasons to the contrary. The Government has a right to appeal sentences it considers too lenient, and that has been done in the last 2 years.

The problems facing us now, real or imagined, will not be around very long.

OVERCROWDING PROBLEMS IN DISTRICT JAIL

Senator SPECTER. Mr. diGenova, we have discussed with some frequency over the past few years the problems in the District jail and, fortunately, with the Mayor's cooperation, we are moving ahead on a timetable to correct that problem with the additional jail space.

Since we last had a hearing, which has been many weeks ago, do you have anything new to report on the condition of overcrowded circumstances at the District jails as that may relate to sentencing of drug pushers or anybody else?

Mr. DIGENOVA. Nothing has been reported to us officially, Mr. Chairman.

Senator SPECTER. But the situation is still one that it is very overcrowded in the District jails?

Mr. DIGENOVA. I think it is. I know the city just opened up recently the additional beds at Lorton with the new facilities. I understand there is some additional expansion under consideration, but I really do not know what those timetables are.

PROBLEMS OF DRUGS WITHIN LORTON

Senator SPECTER. I note in this morning's news that two Lorton officers were held in cocaine sales to inmates at Lorton, and without getting involved in those specific matters, Mr. diGenova, how serious, if at all, is the problems of drugs within Lorton?

Mr. DIGENOVA. Well, Mr. Chairman, let me just say, as I must, that these matters are under active investigation so I must be very careful about what I say.

It is safe to say that the problem deserves the attention of Federal and local law enforcement authorities. Otherwise it would not be addressed. It is being addressed. Mr. Palmer has identified it as a problem which he wishes to address and eradicate. He is receiving the cooperation of the DEA and the FBI, and Ms. Monzell, the U.S. attorney in the Eastern District of Virginia, the district in which Lorton resides, and we have been working with Mr. Palmer with regard to the District jail to investigate matters there, and those things are under investigation. It is a serious problem and one which is not being avoided.

Senator SPECTER. It is a serious problem and one which is not being avoided, you say?

ADEQUACY OF TREATMENT FACILITIES

Mr. DIGENOVA. By us in terms of dealing with it.

Senator SPECTER. We are going to take this up with later witnesses, but let me get an evaluation from you gentlemen as to the treatment centers in the District of Columbia.

The Mayor has made an effort, expanded effort on this subject. When we had a hearing last October, Mayor Barry responded by including an additional $4.8 million for drug treatment and prevention programs, and I would be interested in your evaluation, Chief Turner, as to the adequacy of treatment centers in the District.

Chief Turner. Obviously, Mr Chairman, the treatment centers are understaffed. I see Dr. Lonnie Mitchell in the audience. He can better address that.

From the police side of the spectrum, we do not think there are nearly enough treatment centers in the city to handle the some 15,000 to 20,000 addicts that we have.

Senator SPECTER. We will pursue that with Dr. Mitchell. He is going to be on the next panel.

A concluding question. Is there anything you gentlemen would like to see the Congress do by way of assisting you, starting with this Appropriations Subcommittee?

INCREASING THE CONFIDENTIAL FUND

Chief TURNER. I would like to send something up for consideration, Mr. Chairman.

I am told, and I have in the audience the Commanding Officer of the Morals Division and the Commanding Officer of the Narcotics Squad. It appears with the escalation of drugs in the city that we do not have enough funds to pursue some investigations. Oftentimes I am approached by the Commanding Officers of the Morals Division or the Narcotics Squad and they have the capacity or the capability, they have made contact to purchase cocaine or heroin and they need $200,000 or $300,000. Normally that is the total of the confidential funds that we have for an entire year. So, oftentimes, we do not pursue other investigations because we cannot afford to use $50,000 to further an investigation. I think that is something that should be taken into consideration; the confidential funds of the Metropolitan Police Department ought to be increased.

INCREASED NEEDS OF DEA

Senator SPECTER. All right, Chief Turner, we will take a look at that. We will respond to your request.

Any suggestions you might have, Mr. Zigrossi?

Mr. ZIGROSSI. No; not at all. I feel we have the laws we need to do the job. We can always use additional resources but, beyond that, I feel very comfortable and I feel down the road we will achieve success.

ADDITIONAL STAFF FOR THE ATTORNEY GENERAL'S OFFICE

Senator SPECTER. Mr. diGenova, I am hesitant to ask you for your recommendations as it will be such a long list. But I hereby do.

Mr. DIGENOVA. Well, Mr. Chairman, out of respect for the demands of the time on this committee, I will keep it short. But I think I would be derelict in not saying, obviously, given caseloads in superior courts that both judges and prosecutors are facing, I think notwithstanding the generosity of Congress over the last several years, particularly with regard to our office since, you know, we will be leaving permanently both courthouses by Christmas 1985, the logistical demands which will be placed on our office and which have been of great concern to the Attorney General and all those in the Department because of the primal function which we serve to both the superior court and the U.S. District Court probably will require us to be requesting additional assistant U.S. attorneys and support staff through appropriate departmental channels which we propose to do.

CAREER CRIMINAL LEGISLATION

Senator SPECTER. Mr. diGenova, one other subject not directly related but indirectly related.

How have—and I know our staff have talked about this, but I would like to ask you, since we are talking together this morning—what option and opportunities have you seen for application of the career criminal statute since uniquely you wear both hats here, one head with both hats?

Mr. DIGENOVA. Well, Mr. Chairman, shortly after that piece of legislation was enacted into law, I was contacted, as I informed this committee, by the Associate Attorney General, Mr. Jenson, and asked to conduct a survey of the cases from the last few months to see what we could garner about the impact of that statute and who we would have been available to prosecute had we had that statute on the books.

We reviewed about 1,500 cases and came up with a profile of just, I believe it was, nine defendants who would have qualified. As you know, that statute since you drafted it provides for a Federal mandatory minimum for the commission of a crime with a gun, if the person has three prior convictions for either burglary or robbery. What we have seen thus far this year, because we screen every case that comes into our chronic offender unit, and I get a monthly report, is we have had no cases thus far in 1985 which qualify as of the end of April—excuse me, the end of March. I have not received my April report yet, and it does indicate that some broadening of the predicate offense base to include such crimes as murder, felony drug pushing, serious assault, and other types of crimes beyond burglary would be helpful as the expansion of the predicate offenses in RICO has been helpful to us in terms of utilizing that statute.

Let me underscore that there is no lack of desire to enforce that particular law. We are just not being presented with fact patterns or defendants which permit us to do so.

Senator SPECTER. What I would like to do, Mr. diGenova, is to have Mr. Leeth of my staff work with your staff and get the statistics on how a broadening of categories might be of assistance and make the statute more applicable.

Mr. DIGENOVA. Mr. Chairman, we would obviously be delighted to do that and help in any way we could.

Senator SPECTER. Thank you.

I would like now to call upon the distinguished ranking member on the Democratic side of the subcommittee, Senator Lautenberg.

OPENING REMARKS OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

This is my first hearing as a ranking member of this subcommittee and I am pleased to be here. As the chairman knows, the assignment of the subcommittees, as to this subcommittee, are not as really hotly contested. I was able to prevail over substantial odds to secure this position.

Joking aside, I am very interested. This city represents a very important center for our Nation, and it distresses me at times when I see some of the problems that you have here in Washington just as we have in other cities across the country. I come from the most urbanized State, most densely populated State in the country, New Jersey, and those problems do arise when you have the kind of income variations that you have within the community. So I am very interested and I want to be of help.

But I also tell you that I take my responsibilities very seriously, and where we disagree, I am going to let you know it, and I would expect response from you as professionals, all of you, to let me know where you think I might be wrong.

I would like to just start off—I had an opportunity to review the testimony, Mr. diGenova, that you submitted. I want to ask you this: Do you think that particularly in the area of drug enforcement there is any less interest on behalf of those of us who are parents and citizens of the community who are not of the present party, the majority party in the White House and Senate? Do you think we have less of a desire to solve the problems that our community faces?

Mr. DIGENOVA. No, sir.

Senator LAUTENBERG. Well, I will tell you this. I do not think that it does our debate any good to introduce the very partisan testimony that you did in your submission, criticizing the past administration and making the reference to how we in the present administration have such a superior record. I salute any efforts that this administration or any administration does to get this scourge off our streets. It is a blight on every citizen in this community and throughout this country, and those who have the responsibility for enforcement run considerable risk, perhaps the greatest risk that we have in terms of crime fighting that this country has ever seen. So I think it would be in the interest of cooperation, support, working together, we put aside our partisan references and get on with the task at hand. And I appreciate your head nodding because that suggests that you agree with me. And I think it is important that we join together in solving this.

I am glad to meet each one of you. Chief Turner, you have a big responsibility in a very complicated community, and I salute you for the efforts I have seen thus far since my short term of residence in this community.

I wanted to ask you a question, Chief, about what you have as available resources to get this job done.

SERIOUSNESS OF DRUG PROBLEM IN THE DISTRICT

Last October, you said in testifying before this subcommittee, and I quote you, "I think the problem is so serious that approximately 1 percent of the police department has dedicated at least 70 to 100 percent of their time to enforce only the drug laws."

Do you recall this statement?

Chief TURNER. I do not recall the statement right now, Senator Lautenberg. Let me say that I consider the problem the No. 1 problem, the No. 1 public safety problem in the city. And when I was appointed to Chief of Police in October 1981, one of the first things I did was establish a narcotic task force. That narcotic task force has been in existence since the latter part of August 1981, and up until today's date has made close to 9,000 arrests. The number of complaints that were coming in were street level sales, the dealing and the day-to-day dealing of drugs for street sales. I think to a degree, we have been successful in making arrests.

The biggest frustration I have had as Chief of Police is the inability to effectively remove drugs from the streets, and the complaints that are so often called to my office, the drugs and the drug dealers that go on and the violence that is associated with it.

We currently have 281 officers who are assigned full time to the enforcement of drug activities in this city, and we continually make assessments to see if that is the appropriate amount of resources that we should have.

The Mayor has just urged me and my deputies, the four assistant chiefs and the 10 deputy chiefs, to come up with a comprehensive drug program that we can coordinate with the other sectors of the D.C. government in coordination with the Federal entities here, the DEA and the FBI and the U.S. attorney's office.

I think we are beginning to make some headway, but it is a very difficult and very tedious task that confronts these officers. They deal with these dredges every day out here on the street, day in and day out.

Senator LAUTENBERG. Did I hear you correctly? What is the total population of the police force right now?

NUMBER OF AUTHORIZED POLICE POSITIONS

Chief TURNER. We are authorized 3,880 police officers. I would say we are probably 20 to 25 down from our authorized strength. We are scheduled to hire again in the first part of September, and we will be back up to that authorized strength of 3,880 police officers.

Senator LAUTENBERG. So you are off now about 20 percent?

Chief TURNER. Yes.

Senator LAUTENBERG. That is 700 officers short?

CURRENT ONBOARD POLICE STRENGTH

Chief TURNER. No; we currently have onboard somewhere around 3,860 or 3,850 police officers.

Senator LAUTENBERG. And the fully authorized complement based on payroll is how much?

Chief TURNER. 3,880 authorized.

Senator LAUTENBERG. You are short only 20?

Chief TURNER. Yes, sir; 20 to 25 officers.

NARCOTICS ENFORCEMENT IN MORALS DIVISION

Senator LAUTENBERG. Does the Morals Division do narcotics enforcement?

Chief TURNER. Yes, sir; we have a Narcotics Squad in the Morals Division. We have a decentralized narcotics enforcement in all seven police districts, and that is augmented by the narcotics task force which was also placed in the Narcotics Division to attack street level sales.

Senator LAUTENBERG. That is, therefore, included in the number of 280 if I heard you right?

Chief TURNER. 281, yes.

NO INCREASE IN POSITIONS IN FY 1986 BUDGET

Senator LAUTENBERG. In your request for 1986 funding, you do not ask for an increase in positions in the police department.

Is that because the facts of life may not permit it or is that because it is not required or is, in fact, at your request?

Chief TURNER. We did not request an increase in the number of police officers in the 1986 budget submission. We will be testifying very shortly in front of this committee on our request.

Senator LAUTENBERG. And you did not request an increase in the size because you have enough people to do the job with?

Chief TURNER. We think we have enough people to do the job. The job is omnipresent. Drugs are everywhere in the city. I mean it does not cross one particular race, rich or poor or black or white, or any ethnic group whatsoever. We deal with all segments of society using and abusing drugs.

GAINING ON THE WAR AGAINST NARCOTICS

Senator LAUTENBERG. So that are we gaining on your war against narcotics, Chief?

Chief TURNER. In my opinion, we are gaining. The number of arrests are increasing.

NUMBER OF ADDICTS IN THE DISTRICT

Senator LAUTENBERG. I think I heard 14,000 or 15,000 addicts?

Chief TURNER. Estimates are anywhere from 15,000 to 20,000 addicts in this city.

Senator LAUTENBERG. Do you think it has grown?

Chief TURNER. I believe, in my opinion, it has grown. I think Dr. Mitchell will be better able to pinpoint that. I know the number of overdoses are going up every year.

Senator LAUTENBERG. Dr. Mitchell is in the next panel I understand.

So that you have or at least you see signs that there is growth in addiction, growth in, as you said, narcotic-related dead. I know you have got to be optimistic at all times in your job and it gets discouraging, I am sure.

But with that evidence in front of you, does your gut reaction tell you that we are gaining on it or maybe slipping a little bit?

GAINING ON DRUG PROBLEM

Chief TURNER. I do not think we are slipping. I think we are just beginning to reap some of the benefits from our combined efforts. The jail population is going up. Those people going to jail are narcotic addicts. We have a mandatory minimum sentence when people are convicted in this city, prosecuted in superior court for the sale and distribution of drugs. I think it is 15 months or 20 months to 5 years. But the jail population is going up tremendously.

When I was first appointed Chief of Police, the daily population of the District jail was around 1,300. It has been as high as 2,700 within the last few months. And the Lorton complex is crowded. The number of prisoners that are in Federal facilities is somewhere around 1,500, so I think we are arresting people and that deterrent factor soon enough is going to catch up in my opinion.

Senator LAUTENBERG. I commend you on the improvement in the statistics for arrests, convictions and so forth. Mr. diGenova as well.

The thing is that as that population of narcotics users grows, the number has got to grow in order for you to just stay even.

PLANS FOR INCREASING THE NARCOTICS DIVISION

In your plan for 1986, will you be keeping the narcotics section about the same size or will you be transferring police officers from other sections into it, or reducing it? What is your program?

Chief TURNER. We make those assessments as problems occur in the city. Whatever is contemporary, we make those assessments.

The commanding officer of the Morals Division has recently submitted a proposal to me. It went to his assistant chief. Right now it is being hashed out between the four assistant chiefs, but he is recommending an additional 150-man detail strictly for the enforcement of narcotics. We say it is a war so we are going to put 150 additional officers out there. How long we can sustain 150 officers on top of the 281, we do not know. We are trying to make those assessments. It may not be 150 officers. It may be 75 additional officers, but we are planning strategies right now along those lines.

Senator LAUTENBERG. It does not sound, Chief, as if staying at the same level of manning in 1986, given the seriousness of the problem of narcotics, that you are going to have enough personnel.

If you had to move 150 out permanently or semi-permanently on top of the group you already have assigned to narcotics enforcement, you would have a very, very significant part of your department with lots of other responsibilities assigned to this particular area, and yet the cap is the same in numbers.

Chief TURNER. Well, the call for service on the public safety side, and we have to respond to it, remains just about the same. We are trying to get a control on the calls for service.

When I first took over, we got 1,400,000 calls into the 911 number. Out of those 1,400,000 calls, we were dispatching close to 780,000 calls for service. That is where the police were called, and with those 780,000 calls for service, we began to monitor that and tried to take the abuses out. It has decreased slightly whereby we can manage the activities of the patrol officers to direct them. When the end result is directed patrol, we can direct the patrol activities of those officers not responding to these calls for service. If the case is such, and we make the assessment that additional personnel or additional resources are needed, certainly I will be making those proposals in the fiscal year 1986 supplemental budget request.

DOING THE JOB WITH CURRENT MANNING LEVELS

Senator LAUTENBERG. Mr. diGenova, you know the kinds of questions I am asking.

Are you inclined to agree with the Chief that the job can be done, forgetting about what the budgetary constraints on the other side are, because they are serious too? Can the job be done with the same kind of manning that we have presently?

Mr. DIGENOVA. Well, certainly I would not presume to speak for the Chief in terms of his area, but certainly in my area I can say with quite a bit of certainty that if the trends continue, and we are talking about a 22-percent increase over the last 4 years in the number of cases coming into the system, then it is clear that in terms of trying cases and guaranteeing that matters are going to be disposed of speedily, as they should be, we are probably going to need some additional resources in superior court in terms of judges and prosecutors.

Senator LAUTENBERG. The whole system?

Mr. DIGENOVA. Absolutely. That is not by way of contradicting the Chief because his responsibilities are unique and different from those of us and, in fact, what happens is there is a funnel effect on our part of the system which is created by the terrific enforcement effort that the Chief and Mr. Zigrossi and the DEA agents are doing. And the fact is that we have an increase in the number of cases and the trials and the dispositions going up dramatically, and that means that we need more resources and we have to be honest about that.

Senator LAUTENBERG. We have talked about it in terms of the job, and I think the second point of review is how do we pay for it, if we can.

One last question, Mr. diGenova. You said that the LECC developed plans to focus all of the available Federal resources on the worst local crimes and work closely with the State and local police and prosecutors in combating the crimes.

Does the LECC for the District have such a plan as well?

Mr. DIGENOVA. Mr. Chairman, Senator Lautenberg, what we have done is——

Senator LAUTENBERG. From your mouth to God's ears as my grandmother says.

Mr. DIGENOVA. What we have done is since the LECC was established in 1982, when it was initiated, we have met on a bimonthly basis in order to set priorities and define needs. And, for example, growing out of that has been the coordinated intelligence proposal which has been made by Mr. Jackson in conjunction with the Chief and the FBI to share regional drug intelligence.

I wish Mr. Jackson was here to explain that. He is out of town. That is one of the outgrowths of the Law Enforcement Coordinating Committee, and I must say, as someone who has been both a participant and an observer in law enforcement over the past 15 years, I can tell you one thing about the LECC, and that is that it brings people together mandatorily on a regular basis to talk about problems. And what we are discovering is in getting together regularly, we are enjoying it and we are discovering the kind of problems we all have. And in terms of planning, I do not think the regional planning has ever been better in terms of how to approach these problems and, indeed, the Chief, for example, with regard to the new fingerprint exchange program which was just established, that has been a tremendous improvement, which is an outgrowth of the kind of regional cooperation which even existed before the LECC.

As you know, the Chief can address this better than I can. We have a regional exchange of fingerprint information which is going to reduce the timeframe for the apprehension of ordinary defendants and drug defendants.

There are plans, coordinated plans being made, and the LECC does not cost a dime. It is just a group of people getting together and we all pitch in for coffee and doughnuts and, in that sense, it does cost a little bit.

Senator LAUTENBERG. Thank you.

Thank you, Mr. Chairman.

CLOSING REMARKS OF SENATOR SPECTER

Senator SPECTER. Thank you very much.

Mr. diGenova, thank you. Mr. Zigrossi, thank you, and thank you, Chief Turner, very much for being here.

I would like to turn next to Mr. Peter Reuter from the Rand Corp., Dr. Floretta McKenzie, Superintendent of the D.C. Public Schools, and Dr. Lonnie Mitchell, Administrator of the D.C. Alcohol and Drug Abuse Administration.

I have other commitments which I am going to have to be going to shortly, 1:30 at the outside. So I would like for you to make your statements as briefly as you can.

SUBMITTED QUESTIONS

Senator Lautenberg will submit his questions for the record. We may have to bring you back at a later time.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

SENATOR LAUTENBERG:
1. You and the DEA point to the DEA/MPD Task Force as a good example of effective Federal-Local cooperation in drug enforcement. How long has this Task Force been in existence?

CHIEF TURNER:
1.The DEA/MPD Task Force has been in existence since 1978.

SENATOR LAUTENBERG:
2. How many felony cases has the Task Force developed?

CHIEF TURNER:
2. Since its inception the DEA/MPD Task Force has developed a total of 460 felony cases.

SENATOR LAUTENBERG:
2a. How many of these resulted in indictments/information?

CHIEF TURNER:
2a. All of the cases developed resulted in indictments.

SENATOR LAUTENBERG:
2b. How many convictions by plea or trial has the task force obtained?

CHIEF TURNER:
2b. About 99% or 455 cases resulted in convictions.

SENATOR LAUTENBERG:
1. Please supply for the record the number of officers who dedicate more than 70 percent of their time to drug enforcement, for each of the Police Districts.

CHIEF TURNER:
1. A total of 110 officers assigned to the seven police districts dedicate more than 70 percent of their time to drug enforcement. See the below list for the breakdown of districts and officers assigned:

District	Number Assigned
First	16
Second	8
Third	22
Fourth	20
Fifth	17
Sixth	14
Seventh	13
Total	110

QUESTIONS -- PANEL: Re Interdiction and Drug Problems

SENATOR LAUTENBERG:
The Federal Government puts considerable emphasis on the interdiction of foreign source illicit drugs. Mayor Barry and other

city officials have also stressed the importance of interdiction As the Mayor puts it, "Heroin does not grow on 14th Street." Suppose that it were possible to interdict 100 percent of foreign source drugs. What would the effect on the D.C. Drug problem be?

Would drug abuse disappear or would we still have a major problem?

CHIEF TURNER:
It is without a doubt that if the federal government were able to successfully interdict 100 percent of the foreign-source drugs, this action would severly diminish the availability and usage of heroin and cocaine in the U.S. However, within the District of Columbia, the supply of the drug PCP (Phencyclidine) which is manufactured locally, would not be as drastically reduced due to interdiction. Additionally, the increasing cultivation of domestically grown marijuana would not be greatly affected by interdiction. Therefore, PCP, marijuana, and other manufactured drugs would still pose drug-enforcement problems for the District of Columbia.

PANEL II—D.C. BOARD OF EDUCATION

STATEMENTS OF:

PETER REUTER, THE RAND CORP.

DR. FLORETTA DUKES McKENZIE, SUPERINTENDENT, D.C. PUBLIC SCHOOLS

DR. LONNIE MITCHELL, ADMINISTRATOR, D.C. ALCOHOL AND DRUG ABUSE ADMINISTRATION

COMMENTS ON RAND REPORT

Senator SPECTER. Mr. Reuter, thank you very much for joining us. We will start with you if we may.

Mr. REUTER. I was supposed to testify about a Rand report that was published last year on strategies toward controlling adolescent drug use. I am in this case substituting for a colleague of mine, Dr. Ellickson, who, as a result of that report, is running a major experiment on the effectiveness of new drug prevention programs aimed at junior high school level students, using techniques developed in antismoking programs that have been shown over a number of jurisdictions to be extremely successful.

The results of the Rand experiment which is being funded by the Conrad Hilton Foundation are not yet available, but there is, I think, from other studies preliminary evidence to suggest that prevention programs which, for good historical reasons, have had a bad reputation, in fact deserve more attention than they have of recent times received.

RECOMMENDED PROGRAMS IN RAND REPORT

Senator SPECTER. What is the essence of the recommended programs, Mr. Reuter?

Mr. REUTER. I think there are four ingredients to this program. First of all, the emphasis is not on what has traditionally been emphasized, the long-term effects of drug use on health, but on short-term effects to which adolescents are most likely to relate. Bad breath comes to mind, weakened athletic performance, things like that.

Second, the use of older peers to deliver these messages rather than to have been delivered by adults who are somewhat remote and often from occupations that adolescents take somewhat less seriously than we would like.

Third, the programs, as do a number of others reported in the mass media, emphasize dealing with peer pressure to use drugs.

And, fourth, these are programs which are repeated over time. They are not just one. There is not just one dose of the treatment that is received in, let us say, eighth grade and then it disappears. But it is a message that is repeated over a 3- or 4-year period.

Senator SPECTER. What is the success rate?

Mr. REUTER. I cannot report any results with respect to the drug programs based on these efforts. The techniques here are techniques that have been developed to reduce adolescent smoking rates, and there are a number of reports of quite dramatic successes whereas for, I think it is, sixth graders, these programs reduce the percentage of use of cigarettes daily from about 15 percent to approximately 5 percent over a 2-year period. That is a very dramatic reduction, and we think that there are characteristics of contemporary drug use, particularly marijuana use, which give reason to believe that the same techniques might have significant effects on adolescent drug use.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Reuter. We have your complete statement and it will be placed in the record.

[The statement follows:]

STATEMENT OF PETER REUTER

I have been asked to testify here about a Rand study, sponsored by the Conrad Hilton Foundation, on the efficacy of alternative policies aimed at reducing illicit drug use in this country. My contribution to that study (Polich, J.M. et al. Strategies_for_Controlling_Adolescent Drug_Use Rand Corporation, Santa Monica, California 1984) was an analysis of supply reduction strategies, ranging from international source control programs to local enforcement against retail drug markets. The analysis focused on marijuana, cocaine and heroin. Here I shall briefly discuss the results of that study with respect to source control, interdiction and high level enforcement programs and then suggest some of the peculiar merits of local domestic drug enforcement aimed specifically at "street" drugs, such as heroin and Dilaudid.

Supply reduction programs, including domestic drug enforcement, aim to reduce drug consumption either by creating an absolute scarcity of the drugs or by raising their price. Increasing illegal drug prices will reduce drug consumption, even for addictive drugs such as heroin, though the magnitude of the decrease is purely a matter of speculation.

Source control programs, such as crop substitution and eradication have very little prospect of raising prices or of creating an absolute scarcity. A look at the price of drugs as they flow through the distribution system should make that clear. For example, the price of cocaine when it exits Colombia is less than $12,000 per kilogram, compared to $400,000 per pure kilogram paid by the final users on the streets of Washington or Chicago. Even if the international programs were able to increase the risks incurred by coca farmers in South America so that, say, the price in Colombia doubled to $25,000, this would raise the price of cocaine in America by only about 4 percent. The effect of this on consumption would be very modest. Moreover we have little reason to believe that a doubling of the source country price is attainable with any set of tools currently or prospectively available.

The programs are also structurally inadequate to reduce the total amount of the three drugs available for export to the United States. The chronic excess supply observed overseas is a function of the low opportunity costs of the two resources needed to produce the drugs; peasant farm labor and low productivity land. Farmers will always be willing to hold some inventory in case a buyer turns up. A more extended analysis of these programs is contained in my "Eternal Hope: America's Quest for Narcotics Control" The Public Interest Spring 1985.

The same arguments apply to interdiction programs. For purposes of evaluating the effects of interdiction on drug prices, drugs seized before they enter this country should be valued at their replacement cost for drug distributors. A kilo of cocaine seized between Colombia and Miami should be valued somewhere between $15,000 and $40,000, for that is what it costs the distribution system to replace it. Using this approach we estimated that doubling the 1982 interdiction rate for cocaine would raise the domestic price by less than 5 percent. We used a series of assumptions which tended to raise the estimated effect; it might be a great deal less than 5 percent. Even including the effect of incarcerating couriers so that future couriers will demand higher pay, we could not produce a large increase in price from doubling the 1982 interdiction rate.

The effects of high level domestic enforcement are more difficult to determine. Using a relatively crude economic approach we estimated that if the federal effort against high level dealers doubled its 1982 efficacy, in terms of the number of the number of Level 1,2 and 3 dealers, this would raise the prices of cocaine and marijuana by about 10 percent. The analysis was speculative, since data on the structure of high level markets is not available. But experience over the last two years, during which the number of major drug violators committed to federal prison doubled to almost 8,000, suggests that the analysis was not too pessimistic. Available data do not point to any significant increase in retail prices; indeed it is possible that there has been substantial decline in the price of cocaine.

The relative ineffectiveness of high level enforcement may also be explained by the structure of drug prices. Most of the price of heroin and cocaine, particularly, comes from payments to dealers at the bottom of the distribution system, not to those at the top. When heroin is sold in kilogram units, the low end of the level at which the federal effort appears to be focused, the price is only about 20 percent of its street price. Even if the federal efforts make the business of high level dealers much riskier, so that they increase the price they charge for buying and distributing large quantities, this will do little to raise the street price of heroin.

It is routinely claimed, though there is no systematic evidence, that the lowest level heroin dealer marks up his drug price by approximately 100 percent under normal conditions. This is accounted for by the fact that it is the lowest level dealer, whose customers include a high percentage of potential informants, as well as people who may attack him for either his heroin or his money, who bears the greatest risk. Raising his already high risk may have a very high return for drug enforcement resources. Remember, the higher the retail price of heroin, the greater the incentive of customers to attack or steal from street dealers; this adds still more to the riskiness of the activity and hence raises the drug price. The same comments apply even more clearly to the market for the other "street" drugs which are such an important part of the drug problem in Washington, such as Dilaudid and PCP.

Mark Moore (Buy and Bust D.C. Heath, Lexington, Mass. 1977) argues that any policy that raises the difficulty of users finding dealers has two highly desirable effects, compared to policies that merely increase the risk faced by dealers. First, it reduces the flow of new users into the population of heavy users; a new heroin user, probably introduced to the drug by a regular user, will have difficulty finding a dealer and will become discouraged from regular use. Second, by increasing the search time for regular users to find a source, it raises the motivation of these users to seek treatment and reduces the time available for criminal, habit supporting, activities. Though Moore made these arguments specifically with respect to heroin use, they apply to any drug whose use is addictive, which is sold in street transactions and whose user population includes a significant proportion of active criminals. Clearly they apply relatively weakly to cocaine and marijuana distribution.

Low level enforcement is the only police activity which can have these effects. All other enforcement can only increase price, which always runs the risk of raising crime rates. Low level enforcement forces street level dealers to be more discreet, in two senses. First, they will attempt to make it more difficult for police to surveill their transactions. That means less of the visible street trafficking which is such a disturbing sign of community decay. They will also be more careful in screening customers, thus raising the difficulty for new users to find dealers willing to sell to them. Moreover addicted users whose needs are urgent, unpredictable and can never be met out of their own inventory, are going to have to spend more time in finding a dealer who knows them and is willing to deal with them at short notice.

Strategies which make users suspicious of dealers also have a good deal to recommend them. It may well be appropriate in some instances to conduct "sell and bust" campaigns i.e. to turn a dealer and use him to make arrests of his regular customers. Such a policy again adds to the unpleasantness of street addict life without increasing the inducement to crime.

Of course local drug enforcement is not just a police activity; it also involves prosecutors and judges. Police in many cities have been discouraged from aggressive low level drug enforcement by prosecutors unwilling to proceed against low level dealers and users and by judges who give non-custodial sentences to all but the most serious offenders. For most regular street users, another arrest has little sanction except for possible revocation of bail and loss of the drugs seized at the arrest. To be effective, there has to be some agreement among the three branches which raises the risks incurred by all involved in street drug traffic.

This is not to say that all arrested users and dealers need to be given prison sentences. As in so many other areas of law enforcement, the critical issue is discriminating among offenders, so that scarce prison resources can be allocated to those whose incapacitation has the greatest value. For many users, as has long been recognized, the appropriate follow-up to arrest is not incarceration but mandatory treatment, along with a probation which requires regular urinalysis. In general incarceration should be reserved for those whose prior records suggest that they are high rate offenders and who have failed in previous treatment referrals.

Local enforcement is no panacea. High level enforcement has the merit of ensuring that those who profit most from drug distribution are punished. But low level enforcement, a very unglamorous and repetitive activity, may have important merits for controlling certain kinds of drug markets that are particularly significant for the rates of property and violent crime. The issue is made acute by the near doubling of the federal drug enforcement budget over the last five years, most of it devoted to the higher levels of enforcement and interdiction.

It is impossible at this time to say what could be achieved by intensified local drug enforcment against street markets. New York City has recently devoted considerable resources to suppressing the drug markets on the lower East Side of Manhattan. This has been accompanied by declines in certain crime rates and some increases in drug treatment admissions. Whether these are lasting effects and whether there has been a displacement of drug markets, and associated criminal activities, to other communities, is impossible to tell.

More systematic evidence comes from a recent study of a medium-sized city, Lynn, Mass. in which a campaign against visible street level heroin markets substantially increased the flow of addicts into treatment and also lowered property crime rates (Kleiman, M. et al."Report to the District Attorney for Essex County: Evaluation of the Lynn Drug Task Force" Kennedy School of Government, Harvard 1984). But small towns support relatively small numbers of drug dealers; it may be much easier to suppress these markets than the large and rather flexible markets that are found in cities of the size of Washington.

I end with the usual plea of researchers. We can do a better job of deciding the allocation of funds between different levels of drug enforcement if we had more systematic evaluations of the efficacy of crackdowns and other strategic experiments. At present the choice is largely a matter of images and impressions.

Thank you.

STATEMENT OF SUPERINTENDENT MCKENZIE

Senator SPECTER. Superintendent McKenzie, thank you very much for joining us. Your statement will be made a part of the record.

I note that the Mayor has devoted some resources to expand prevention programs in the D.C. School System, and I would be very interested to hear the results that you have found.

Mrs. MCKENZIE. Thank you very much, Senator, for providing us the opportunity to be here to share in this forum.

Drug abuse is of very great concern to us because it inhibits our ability to deliver quality education and adversely impacts on the effectiveness of our programs inasmuch as we recognize that drug abuse impairs memory, cognitive ability and other things that have direct impacts on learning.

Several years ago, our major concern was to keep our schools drug free, and we recognized that was a limited goal, and we have reached that goal to a certain extent with the very great help from the police department and the increase of our own security corps. But we find that we must look at other strategies to help our young people not to get involved in drug abuse.

So we have heightened our drug prevention education programs and have started to work very comprehensively with community organizations such as Rap, Inc., Community Advocates for Youth, Youth Abstinence Center, and things like that. But we have also expanded our involvement with the Commission on Health and the Alcohol and Drug Abuse Services Administration represented by Dr. Mitchell.

In addition to that, in cooperation with ADASA, we have designed a program for about 70 teachers and counselors to train as many as 500 to 600 youths.

DRUG PROBLEM IN THE PUBLIC SCHOOLS

Senator SPECTER. How serious is the problem of drugs in the schools, Superintendent McKenzie?

Mrs. MCKENZIE. We think it is a serious problem. To give you numbers, we are involved in a survey at the present time, but there is no way for it not to be serious if it is serious in the total community, and it is.

IMPACT OF CURRENT PROGRAMS ON DRUG PROBLEM

Senator SPECTER. What progress, if any, are the current programs making on dealing with the problem?

Mrs. MCKENZIE. We think some limited progress has been accomplished. We think we are on the right track with peer counseling as well as the regular education program for kindergarten through 12.

Senator SPECTER. Superintendent McKenzie, when we have the hearings just a few weeks away on the Board of Education generally, we will have more time, and I regret we were going to be short today, but I would appreciate it if, in preparation for that hearing, you might be in a position to give some judgment evaluation on the total numerical extent of the problem, the success rate of the programs and what might be done by way of augmenting the current efforts. And we will have a full opportunity to pursue it at that time.

PREPARED STATEMENT

Thank you, Superintendent McKenzie. We will insert your complete statement at this point in the record.

[The statement follows:]

STATEMENT OF FLORETTA DUKES MCKENZIE

GOOD AFTERNOON SENATOR SPECTER AND MEMBERS OF THE SUBCOMMITTEE. FOR THE RECORD, I AM FLORETTA DUKES MCKENZIE, SUPERINTENDENT OF SCHOOLS, AND CHIEF STATE SCHOOL OFFICER, OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS. AGAIN, IT IS A PLEASURE TO HAVE THIS OPPORTUNITY TO COME BEFORE YOU TO TESTIFY ON BEHALF OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS ON OUR FY 1986 BUDGET REQUEST.

THE FY 1986 BUDGET REQUEST OF $359.5 MILLION CONTAINS THOSE RESOURCES THAT ARE NECESSARY TO ENSURE THAT ANTICIPATED MANDATORY PERSONNEL SERVICES COSTS ARE COVERED, ALONG WITH THE CONTINUATION OF NEW INITIATIVES AND THE MAINTENANCE OF BASIC PROGRAMS AND SERVICES. OUR SCHOOL SYSTEM CONTINUES TO FACE MANY CHALLENGES, BUT THIS BUDGET REQUEST WILL ENABLE US TO MAINTAIN THE EDUCATIONAL GAINS ACHIEVED OVER THE LAST FEW YEARS. IT WILL ALSO ENSURE THAT WE HAVE THE RESOURCES NECESSARY TO CONTINUE BUILDING A SOLID FOUNDATION IN EDUCATION. AS YOU WELL KNOW, THIS IS NEEDED IF THE CHILDREN AND YOUTH IN THE DISTRICT OF COLUMBIA ARE TO HAVE THEIR CHANCE AT A SUCCESSFUL AND FRUITFUL LIFE.

THE COMMITTEE'S ASSISTANCE IN THE PAST TOWARD ACHIEVING THIS END HAS BEEN INSTRUMENTAL IN THE PROGRESS THAT HAS OCCURRED THUS FAR, AND IS NECESSARY FOR THE ULTIMATE ATTAINMENT OF THIS GOAL. YOUR SUPPORT AND THAT OF THE BOARD, CITY COUNCILMEMBERS, GOVERNMENTAL OFFICIALS, AND BUSINESSES, AS WELL AS THAT OF THE PARENTS, EDUCATORS AND CHILDREN OF THE DISTRICT OF COLUMBIA IS HEARTENING. AS I INTERACT WITH PEOPLE AROUND THE COUNTRY WHO ARE EVIDENCING A GROWING COMMITMENT TO PUBLIC EDUCATION, OUR SCHOOL SYSTEM HAS BEEN IDENTIFIED AS ONE OF THE STRONG MODELS OF URBAN EDUCATION.

WITH THE REQUESTED FY 1986 BUDGET, THE SCHOOL SYSTEM WILL BE ABLE TO CONTINUE ITS GAINS OVER THE PAST YEARS AND FORGE NEW ACHIEVEMENTS.

SPECIFICALLY, THE SCHOOL SYSTEM WILL BE ABLE TO MAKE THE FOLLOWING NEEDED IMPROVEMENTS:

- SUPPORT THE BILINGUAL PROGRAM AND THE ESCALATING NUMBER OF STUDENTS WHO NEED TRAINING IN ENGLISH AS A SECOND LANGUAGE;
- PROVIDE REGULAR BUDGET SUPPORT FOR THE FIRST TIME TO THE GIFTED/TALENTED STUDENT POPULATION;
- ENHANCE INSTRUCTIONAL SUPPORT FOR THE CLASSROOM BY STABILIZING FUNDING FOR PARA-PROFESSIONALS;
- PHASE IN A THREE-YEAR PROGRAM FOR OFFERING FULL DAY PREKINDERGARTEN SERVICES AND THEREBY ENSURING A SOUND EDUCATIONAL FOUNDATION FOR THE MANY EDUCATIONALLY AND CULTURALLY DIVERSE STUDENTS OF THE CITY;
- INCREASE FUNDING FOR CLASSROOM SUPPLIES AND MATERIALS. THESE INCREASES WILL HELP RESTORE THE REDUCED SPENDING POWER OF OUR SUPPLY AND MATERIAL DOLLARS AND ENSURE THAT ALL STUDENTS HAVE THE NEEDED TEXTBOOKS AND OTHER APPROPRIATE MATERIALS FOR INSTRUCTION;
- CONTINUE THE SCHOOL SYSTEM'S PROACTIVE STEPS TO EMPLOY TECHNOLOGY TO IMPROVE EDUCATION BY USING INSTRUCTIONAL TELEVISION SERVICES, PROVIDING COMPUTER ASSISTED INSTRUCTION FOR REMEDIATION SUPPORT, AND USING COMPUTERS TO ENHANCE BOTH LOCAL SCHOOL AND CENTRAL MANAGEMENT OPERATIONS;

- ENHANCE THE SCHOOL SYSTEM'S EFFORTS TO PROVIDE A SAFE, SECURE AND APPROPRIATE INSTRUCTIONAL ENVIRONMENT FOR STUDENTS IN THE SCHOOL; AND

- PROVIDE FOR IMPLEMENTATION OF THE TEACHER INCENTIVE PROGRAM WHICH IS DESIGNED TO IMPROVE THE QUALITY OF TEACHING AND LEARNING FOR OUR STUDENTS. EQUALLY, THIS EFFORT WILL ENABLE THE SCHOOL SYSTEM TO BETTER ADDRESS STABILIZING STUDENT ENROLLMENT AND ANTICIPATED TEACHER RETIREMENTS IN THE WAKE OF A NATIONAL DECLINE IN QUALIFIED TEACHERS.

THESE EFFORTS HIGHLIGHT THE IMPROVED PROGRAM OFFERINGS TO BE ACCOMPLISHED WITH THE FUNDS REQUESTED IN OUR FY 1986 BUDGET REQUEST. WE HAVE DEMONSTRATED OUR ABILITY TO EFFECTIVELY MANAGE OUR RESOURCES IN A RESPONSIBLE MANNER AND TO PROVIDE QUALITY EDUCATION FOR OUR STUDENTS. WE HAVE ALSO DEMONSTRATED THE ABILITY TO BE A PIONEER IN URBAN EDUCATION EFFECTIVENESS. WE FEEL CONFIDENT THAT WITH YOUR CONTINUED SUPPORT THESE SUCCESSES WILL CONTINUE AND THE MANY CHALLENGES FACING THE SCHOOL SYSTEM AND OUR COMMUNITY CAN BE OVERCOME.

DUE TO THE INSIGHTFULNESS OF CONGRESS, THE SCHOOL SYSTEM RECEIVED ADDITIONAL FY 1985 APPROPRIATIONS TO SUPPORT BOTH OUR TEACHER INCENTIVE INITIATIVE AND TO COMBAT THE CHALLENGES FACED IN TRYING TO IMPROVE ATTENDANCE AND REDUCE TRUANCY AND DROPOUTS. LET ME TAKE JUST A FEW MOMENTS TO UPDATE YOU ON OUR EFFORTS IN THESE TWO AREAS.

OUR TEACHER INCENTIVE PROGRAM HAS FOCUSED ON THE TEACHER AS A PROFESSIONAL AND DIRECTS ATTENTION TO RECOMMENDATIONS RECEIVED FROM THE TASK FORCE APPOINTED TO RESEARCH AND STUDY MERIT PAY, INCENTIVES, AND CAREER LADDERS FOR TEACHERS. DURING THIS LAST YEAR, WITH THE ADDITIONAL APPROPRIATIONS RECEIVED, WE WERE ABLE TO MAKE THE FOLLOWING STRIDES:

- IMPLEMENT THE TEACHER INCENTIVE AWARDS PROGRAM WHICH SUPPORTS THE DEVELOPMENT AND ADOPTION OF EXEMPLARY CLASSROOM PROGRAMS.

- IMPLEMENT THE SCHOOL IMPROVEMENT INCENTIVE AWARDS PROGRAM WHICH ENCOURAGES EXCELLENCE THROUGH COOPERATION WITHIN SCHOOLS BY AWARDING GRANTS TO SCHOOLS FOR EXEMPLARY PROGRAM ACTIVITIES.

- FINALIZE PLANS FOR AN INTERN-MENTORSHIP PROGRAM THAT WILL ALLOW THE SCHOOL SYSTEM TO FILL VACANCIES IN CRITICAL TEACHING AREAS WITH QUALIFIED INDIVIDUALS DESTINED FOR SUCCESS UNDER THE TUTELAGE OF A TEACHER WHO HAS DEMONSTRATED SUCCESS.

THESE ACTIVITIES HAVE BEEN INSTRUMENTAL IN BOLSTERING BOTH INDIVIDUAL TEACHER AND SCHOOL MORALE AND IN FURTHERING THE SCHOOL SYSTEM'S EFFORTS TOWARD EXCELLENCE IN EDUCATION. THEY REPRESENT JUST THE FIRST PHASE OF OUR OVERALL TEACHER INCENTIVE PROGRAM THAT WILL HELP TO ENSURE QUALITY EDUCATION FOR ALL CHILDREN AND YOUTH IN THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS.

DURING THE YEAR THE SCHOOL SYSTEM ALSO EXTENDED ITS EFFORTS TO INCREASE STUDENT ATTENDANCE AND REDUCE TRUANCY AND DROPOUTS. THIS THRUST WAS SUPPORTED BY THE ADDITIONAL FUNDING RECEIVED FROM CONGRESS. THESE ADDITIONAL FUNDS HAVE ALLOWED THE SCHOOL SYSTEM TO DIRECT NEEDED RESOURCES TOWARD A PROGRAM THAT IS BASIC TO SUCCESSFUL ACHIEVEMENT IN SCHOOL AND, AS A CONSEQUENCE, FUTURE ACHIEVEMENT IN LIFE.

WE ARE EXTREMELY EXCITED ABOUT HAVING INITIATED A STUDENT ATTENDANCE CENTER, WHICH SERVES AS A REFERRAL AND RESOURCE BASE FOR SCHOOLS AND THE COOPERATIVE EFFORTS UNDERTAKEN BY THE METROPOLITAN POLICE DEPARTMENT. THIS CENTER IS STAFFED TO HANDLE 80 YOUNGSTERS.

THESE STUDENTS WILL RECEIVE INTENSIVE SERVICES FROM COUNSELORS AND SOCIAL WORKERS OVER AN EXTENDED PERIOD OF TIME. FURTHERMORE, SOME OF THESE FUNDS HAVE BEEN UTILIZED FOR PROCURING TELEPHONE ANSWERING MACHINES TO AID IN REACHING THE PARENTS OF EVERY STUDENT WITH AN UNEXPLAINED ABSENCE ON THE DAY THE ABSENCE OCCURS. WITH THE EXCEPTION OF ONE SCHOOL, EVERY SCHOOL HAS THIS NEW TECHNOLOGY INSTALLED AND OPERATING. COUNSELORS AND AIDES HAVE BEEN ASSIGNED AT THE SECONDARY SCHOOL LEVEL WITH THE SPECIFIC RESPONSIBILITY OF INTERACTING WITH STUDENTS AND THEIR FAMILIES CONCERNING ATTENDANCE PROBLEMS.

WE BELIEVE THAT EFFORTS DIRECTED TOWARD THE EARLY INTERVENTION AND PREVENTION OF PROBLEMS EXPERIENCED BY CHILDREN--WHETHER THEY ARE ACADEMIC, MATURATIONAL, SOCIAL AND/OR EMOTIONAL--GIVE A CHILD A BETTER CHANCE FOR SUCCESS IN SCHOOL, SUPPORT A BETTER SELF-IMAGE, REDUCE THE CHANCES OF BEING SIDE-TRACKED INTO CRIME AND OTHER NON-PRODUCTIVE AND LIFE-DESTROYING ACTIVITIES, AND FINALLY PROVIDE A BETTER CHANCE FOR SUCCESS IN LIFE IN GENERAL.

TOWARD THIS END, HOWEVER, WE BELIEVE THAT THE SOLUTION TO MANY PROBLEMS EXPERIENCED BY OUR CHILDREN DOES NOT LIE WITH THE SCHOOL SYSTEM ALONE. WE HAVE HAD SUCCESSFUL PARTNERSHIPS WITH PARENTS AND OTHER COMMUNITY AND BUSINESS VENTURES, AS WELL AS SUCCESSFUL PARTNERSHIPS WITH THE GOVERNMENT SECTOR. THE SCHOOL SYSTEM'S EFFORTS TO PROVIDE QUALITY EDUCATION TO ITS CHARGES--THE STUDENTS--CAN ONLY BE ACCOMPLISHED WITH THE COMBINED PERSERVERANCE, IDEAS, TALENTS AND RESOURCES OF THOSE MANY SECTORS THAT CAN HELP ELIMINATE THE IMPEDIMENTS TO LEARNING AND LIVING AS A PRODUCTIVE CITIZEN.

BEYOND THE CHALLENGE OF SIMPLY TEACHING, OUR TEACHERS ARE FACED WITH WORKING IN AN ENVIRONMENT WHERE CHILDREN ARE CONFRONTED WITH MANY DETERRENTS TO ATTAINING A QUALITY EDUCATION, NOT THE LEAST OF WHICH IS DRUGS. TO FACE AND CONQUER THIS INSIDIOUS CORRUPTION OF

OUR YOUTH REQUIRE THE COMBINED EFFORTS OF ALL SEGMENTS OF SOCIETY. IT IS NOT A PROBLEM THAT CAN BE SOLVED SOLELY BY THE SCHOOLS. IT IS A COMMUNITY PROBLEM WHICH REQUIRES THE SUPPORT, THE COORDINATED INTERVENTION AND THE PERSISTENT EFFORTS OF ALL SECTORS. WE SEE YOUR COMMITTEE'S EFFORTS IN PROVIDING THIS FORUM AS A PART OF THE SOLUTION, WE APPLAUD THEM AND LOOK FORWARD TO A SUCCESSFUL PARTNERSHIP IN COMING TO GRIPS WITH THIS SCOURGE.

LET ME TAKE JUST A MOMENT TO BRIEFLY HIGHLIGHT SOME OF THE EFFORTS WE HAVE PUT FORTH TO COMBAT THE INFLUENCE OF DRUGS AND SUBSTANCE ABUSE ON OUR CHILDREN AND YOUTH. WE SEE STAFF AWARENESS AS A KEY TO EARLY DETECTION AND APPROPRIATE COUNSELING AND GUIDANCE TO CHILDREN. CONSEQUENTLY, BOARD POLICY REQUIRES THAT ALL EMPLOYEES OF THE SCHOOL SYSTEM RECEIVE TRAINING IN THIS AREA. LIKEWISE, OUR BELIEF THAT COOPERATIVE EFFORTS ARE CRUCIAL TO RESOLVING THIS PROBLEM IS EXEMPLIFIED BY THE MANY AGENCIES AND ORGANIZATIONS THAT THE SCHOOL SYSTEM WORKS WITH TO FOCUS ON ERADICATING THIS DISEASE THAT PREYS ON OUR COMMUNITIES. A FEW OF THESE INCLUDE:

- ALCOHOL DRUG ABUSE SERVICES ADMINISTRATION
- RAP, INC.
- WASHINGTON AREA COUNCIL ON ALCOHOLISM AND DRUG ABUSE
- WASHINGTON COUNSELING CENTER
- COMMUNITY ADVOCATES FOR YOUTH
- YOUTH ABSTINENCE CENTER
- ANDROMEDA INC., AND
- THE METROPOLITAN POLICE DEPARTMENT

OUR CURRICULAR EFFORTS INCLUDE AN APPROACH TO PREVENTION OF SUBSTANCE ABUSE THAT UTILIZES OUR HEALTH CURRICULUM AS A FOCUS FROM GRADE K-12. THIS CURRICULUM FOCUSES ON THE STUDENT AS A DECISION-MAKER WITH FREE CHOICE, WHOSE BEHAVIOR PATTERN WILL BE INFLUENCED

BY HIS/HER VALUE STRUCTURE. THE CURRICULUM MAKES HEAVY USE OF OUTSIDE AGENCIES. IT IS AUGMENTED BY SPECIALIZED PROGRAMS SUCH AS THE YOUTH AWARENESS PROGRAM, WHICH IS A COOPERATIVE EFFORT WITH THE METROPOLITAN POLICE DEPARTMENT, THAT FOCUSES ON VALUES CLARIFICATION, AND THE SPORTS ACTIVITIES NOT DRUGS (SAND) PROGRAM, WHICH IS A PEER COUNSELING PROGRAM THAT USES SCHOOL ATHLETES TO PROVIDE AWARENESS ACTIVITIES FOR THEIR PEERS.

IF ONE CONCURS WITH THE OLD ADAGE "AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE," IT IS DIFFICULT TO DISPUTE THAT THE SHORT-TERM INVESTMENT IN PREVENTIVE EDUCATION AND AWARENESS EFFORTS WILL BRING LONG-TERM DIVIDENDS IN ERADICATING DRUGS FROM OUR COMMUNITY AND OUR SCHOOLS AND CURING OUR SOCIETY OF THE ATTENDANT CRIME, DEPENDENCY, AND MORAL DECAY. THE PREVENTION OF DRUG ABUSE NOW WILL SAVE THE LIVES OF OUR CHILDREN AND OUR COMMUNITIES. TO BE SUCCESSFUL REQUIRES THE COOPERATIVE AND PERSISTENT EFFORTS OF ALL OF US--INDIVIDUALS AND ORGANIZATIONS, INTERNAL AND EXTERNAL TO THE SCHOOL SYSTEM. WE URGE YOUR CONTINUED SUPPORT AS WE PURSUE THESE INITIATIVES.

I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE.

STATEMENT OF LONNIE MITCHELL

Senator SPECTER. Let me turn at this time to Dr. Lonnie Mitchell, Administrator of the D.C. Alcohol and Drug Abuse Services Administration.

The statement you have submitted will be made a part of the record, Dr. Mitchell, and again I think the major part of what we will be calling on you for will be at a later date because of the shortage of time.

EFFECTIVENESS OF ADASA PROGRAMS

Can you give us just an overview as to your evaluation of the scope of the drug problem in Washington, DC, and the effectiveness that your unit is finding in dealing with the problem?

Dr. MITCHELL. Yes, sir. Thank you for having us here to provide this information.

First, I am going to certainly agree with U.S. Attorney diGenova and Chief of Police Turner and, of course, Superintendent McKenzie that there is just no question at all that the problem in the city is an enormous one. And when we think about certain areas and aspects of the problem of a particular drug, I think that we are at near epidemic proportions of the problem, PCP, for example.

What we are trying to do, and as a guiding principle to our work is to, first of all, say that substance abuse, alcohol and drug abuse are serious problems. I do not think that the community over time has really seen the problem as a health problem. They are two of the city's more serious health problems and have some serious health consequences. We are not convinced that the community and the people who are substantial abusers really recognize——

NUMBER OF PERSONS IN TREATMENT PROGRAMS

Senator SPECTER. How many people do you have under treatment at the present time in the drug abuse program?

Dr. MITCHELL. We have currently at the present time about 3,500 persons in treatment.

NUMBER OF PERSONS ACCOMMODATED IN ADASA PROGRAMS

Senator SPECTER. Is that the maximum you can accommodate?

Dr. MITCHELL. Excuse me?

Senator SPECTER. What is the maximum you can accommodate?

Dr. MITCHELL. In terms of inpatient or bed capacity, we have a limited capacity that is not filled at this time and could accept into those programs additional persons, and from the point of view of outpatient operations, there are still some open capacities.

Senator SPECTER. Do you have some open spaces?

Dr. MITCHELL. We do have some open spaces. We support Rap, Inc., and Second Genesis. And while at the moment their capacities are near filled, occasionally those capacities become available.

PREPARED STATEMENT

Senator SPECTER. Thank you, Dr. Mitchell. We do have your complete statement and it will be placed at this point in the record.

[The statement follows:]

STATEMENT OF LONNIE E. MITCHELL

MR. CHAIRPERSON AND MEMBERS OF THE COMMITTEE, I AM DR. LONNIE E. MITCHELL, ADMINISTRATOR OF THE CITY'S ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION, COMMISSION OF PUBLIC HEALTH, DEPARTMENT OF HUMAN SERVICES. FIRST, I AM PLEASED TO HAVE BEEN INVITED TO SPEAK TO YOU TODAY ON THE SPECIAL PROBLEM OF DRUG ABUSE IN THE CITY. SECOND, THIS GIVES ME THE OPPORTUNITY TO SHARE WITH YOU WHAT THE BARRY ADMINISTRATION IS CURRENTLY DOING IN THE AREA OF SUBSTANCE ABUSE AND SOME OF OUR PLANS FOR A REVISED APPROACH TO BOTH DEALING WITH THE PROBLEMS FROM THE DEMAND SIDE AND EXPANDING OUR CAPACITIES.

LET ME BEGIN BY STATING THAT THE BARRY ADMINISTRATION'S OVERRIDING PHILOSOPHY IS THAT SUBSTANCE ABUSE OF ANY KIND IN THE CITY REPRESENTS AND REFLECTS A SERIOUS BEHAVIORAL AND HEALTH PROBLEM; ALCOHOLISM AND DRUG ABUSE ARE DISEASES AND RESIDENTS WITH SUBSTANCE ABUSE PROBLEM WILL BE GIVEN EVERY OPTION AND OPPORTUNITY TO BE TREATED. WE BELIEVE, HOWEVER, THAT IT MAKES BETTER SENSE TO TRY TO PREVENT SUBSTANCE ABUSE PROBLEMS BEFORE THEY BEGIN RATHER THAN TO WAIT AND PROVIDE TREATMENT ONLY. TO THAT END, WHILE THE DEPARTMENT OF HUMAN SERVICES, COMMISSION OF PUBLIC HEALTH, ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION ARE INVOLVED IN A MAJOR TREATMENT AND INTERVENTION EFFORT, WE BELIEVE THAT THE CITY'S FOCUS MUST BE ON HEALTH PROMOTION, EDUCATION AND PREVENTION INITIATIVES - WITH PARTICULAR ATTENTION TO YOUTH.

BEFORE I DISCUSS WHAT THIS APPROACH MEANS ON AN OPERATIONAL LEVEL, IT IS IMPORTANT TO EXAMINE THE INCIDENCE AND PREVALENCE OF DRUG ABUSE IN THE CITY.

ALL OF THE MAJOR STATISTICAL INDICATORS AND DATA SOURCES SUCH AS THE D.C. POLICE DEPARTMENT, HOSPITALS, THE D.C. SUPERIOR COURT SYSTEM, AND OUR TREATMENT PROGRAMS CLEARLY SHOW THAT ALCOHOL AND DRUG ABUSE ARE MAJOR PUBLIC HEALTH PROBLEMS FACING

THE CITY. THESE PROBLEMS SERIOUSLY IMPACT UPON THE LIVES OF ALL OF THE CITY'S RESIDENTS. WE MIGHT NOTE HERE THAT ALTHOUGH THE STATISTICAL DATA ON THE INCIDENCE AND PREVALENCE OF DRUG ABUSE ARE COMPELLING, THEY STILL FAIL TO ADEQUATELY CONVEY THE EXTENSIVE PAIN AND SUFFERING THAT AFFECT THOUSANDS OF THE DISTRICT'S CITIZENS AS A RESULT OF THESE INSIDIOUS DISEASES.

DRUG ABUSE AND ALCOHOLISM ARE PROBLEMS THAT ALL TOO FREQUENTLY GO UNIDENTIFIED AND THEREFORE UNTREATED UNTIL THE PROBLEMS HAVE REACHED THEIR MOST CHRONIC STAGES. IT IS FOR THIS REASON THAT YOU WILL NOTE THAT MOST OF THE SUBSTANCE ABUSE DATA AVAILABLE ARE LIMITED TO ADULTS AND IT IS ALSO FOR THIS PARTICULAR REASON THAT THE BARRY ADMINISTRATION THROUGH ADASA IS REACHING OUT TO YOUNG PEOPLE WITH EDUCATIONAL PROGRAMS AND THROUGH A COMPREHENSIVE EDUCATIONAL EFFORT.

IT IS DIFFICULT TO KNOW EXACTLY HOW MANY POLYDRUG OR MIXED DRUG USERS THERE ARE IN THE CITY - THE KIND OF MIXING OF DRUGS AND ALCOHOL. DURING THE LAST FIVE YEARS, THE CITY HAS EXPERIENCED APPROXIMATELY 1,200 DEATHS ATTRIBUTABLE TO CIRRHOSIS OF THE LIVER, A LEADING INDICATOR OF ALCOHOL ABUSE, AND MORE THAN 500 DEATHS ATTRIBUTABLE TO NARCOTIC RELATED OVERDOSES. THESE REPRESENT A RELATIVELY SMALL FRACTION OF THE CITY'S PROBLEM WHEN WE CONSIDER THE BROADER IMPLICATION OF SIGNIFICANT LINKAGES TO CRIME, SUICIDE, HOMICIDE, ACCIDENTAL DEATH, INJURY, CHRONIC DISEASE, FAMILY DISTRESS AND LOWERED PRODUCTIVITY. MOREOVER, PERSONAL TRAGEDY, HUMAN SUFFERING AND SOCIAL BURDENS ARE CLOSELY RELATED TO SUBSTANCE ABUSE AND THESE COSTS CANNOT BE ADEQUATELY ESTIMATED.

HEROIN CONTINUES TO BE A MAJOR KILLER AND CRIME-INSTIGATOR IN THE DISTRICT, ALTHOUGH HEROIN-RELATED ARRESTS, ACCORDING TO THE METROPOLITAN POLICE DEPARTMENT DATA DECREASED IN FY '84. WHAT IS NEW IS THE RECREATIONAL USE OF HEROIN, OFTEN IN

COMBINATION WITH OUR DRUGS. THIS HAS LED TO DEATHS IN WHICH HEROIN ALONG WITH OTHER DRUGS COMBINED IN A DEADLY DRUG COCKTAIL. OF THE NARCOTIC OVERDOSE DEATHS IN THE DISTRICT IN 1984, MANY SHOWED PCP TRACES IN BODY FLUIDS AS WELL AS THE NON-PCP KILLER DRUG - PRIMARILY HEROIN.

THE DRUG ABUSE WARNING NETWORK (DAWN) IS A JOINT PROJECT WITH THE NATIONAL INSTITUTE ON DRUG ABUSE AND THE DRUG ENFORCEMENT ADMINISTRATION, WHICH GATHERS DRUG-RELATED DATA FROM HOSPITAL EMERGENCY ROOM. IN 1981, THERE WERE 825 EMERGENCY ROOM MENTIONS IN THE DISTRICT, INCREASING TO 874 IN 1982 AND DECLINING BY 7.2% TO 811 IN 1983. IN 1984 1st. half 542. IN 29% OF THE CASES, HEROIN WAS USED IN COMBINATION WITH OTHER WITH OTHER DRUGS.

THE ESTIMATED HEROIN ADDICT POPULATION INCREASED FROM 9,000 IN 1978 TO 16,500 IN 1981. DURING 1982, THE POPULATION DECREASED SLIGHTLY TO 15,500, AND DOWN TO AN ESTIMATED 12,350 IN 1984. THESE 12,350 ADDICTS SPENT APPROXIMATELY 113 MILLION DOLLARS DURING 1984 TO PURCHASE HEROIN.

ADASA ADMISSION STATISTICS SHOW A SLIGHTLY INCREASING HEROIN ADDICT AGE. IN 1984, THE MEAN AGE WAS 28 YEARS OLD, WHEREAS IN 1984 THE MEAN AGE INCREASED TO 30. IN TERMS OF TREATMENT, THE PERCENTAGE OF CLIENTS ON MAINTENANCE DECREASED 2% TO 73%, WHILE THE PERCENTAGE DETOXIFIED INCREASED FROM 6% - 7%, AND FROM 19% TO 20% WERE IN DRUG-FREE PROGRAMS.

A REVIEW OF OUR ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION (ADASA) AND ITS DATA SOURCES INDICATES THAT THE POPULATION WE ARE CURRENTLY SERVICING IS ALMOST IDENTICAL IN AVERAGE AGE, SEX AND RACE OF THOSE REPORTED IN OTHER CITIES.

IN ADDITION, WE KNOW THAT THE CITY HAS AN ESCALATING PROBLEM OF COCAINE AND PCP USE, BOTH BY YOUTH AND YOUNG ADULTS. A RECENT

SURVEY OF OUR HEROIN ADDICT TREATMENT POPULATION SHOWS THAT ABOUT HALF OF THOSE IN TREATMENT FOR HEROIN ADDICTION ACKNOWLEDGED SOME USE OF PCP. IT IS THESE COMBINATIONS OF HEROIN, PCP, COCAINE, ALCOHOL AND OTHER DRUGS THAT ARE CREATING SERIOUS PROBLEMS FOR THE USERS...EVEN CAUSING DEATH, UNFORTUNATELY, OUR TREATMENT STAFF DO NOT ALWAYS KNOW THAT A PATIENT IS USING SEVERAL DRUGS UNTIL A URINE TEST IS COMPLETED. BECAUSE OF THESE INCREASED RISKS INVOLVED WITH MIXING DRUGS, WE HAVE ALREADY TAKEN A NUMBER OF MEASURES TO ADDRESS THIS PROBLEM. AMONG THESE ARE TESTS GIVEN REGULARLY AS A CONDITION OF TREATMENT. OUR PHYSICIANS WILL NOT TOLERATE MULTIPLE DRUG USE OF PATIENTS WHILE IN TREATMENT.

IT IS APPARENT FROM THE STATISTICS CITED ABOVE THAT DECISIVE AND IMMEDIATE MEASURES ARE NEEDED IF THE CITY OF WASHINGTON, D.C. IS TO IMPACT THE SERIOUS PROBLEM OF SUBSTANCE ABUSE IN OUR MIDST. TO THAT END, THE ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION, WHICH IS CHARGED WITH THE TASK OF PREVENTION, INTERVENTION AND TREATMENT OF SUBSTANCE ABUSERS IN THE DISTRICT OF COLUMBIA, HAS COMPLETED A COMPREHENSIVE FIVE YEAR PLAN TO RESPOND TO OUR SUBSTANCE ABUSE PROBLEM. ALTHOUGH THE PLAN IS IN ITS DRAFT STAGE, MANY OF THE INITIATIVES HAVE ALREADY BEGUN. FOR EXAMPLE, A MAJOR COMPONENT OF THE PLAN IS THE COMPREHENSIVE COMMUNITY INITIATIVE AGAINST SUBSTANCE ABUSE. IN THIS EFFORT, ALL SEGMENTS OF OUR COMMUNITY, - YOUNG, OLD, RICH,POOR, GRASS ROOTS, PROFESSIONALS, PARENTS, STUDENTS, FAMILIES, SCHOOLS, CHURCHES, ORGANIZATIONS, PUBLIC AND PRIVATE SECTOR INSTITUTIONS - ARE BEING BROUGHT TOGETHER ON A WARD-BY-WARD BASIS TO IDENTIFY SPECIFIC SUBSTANCE ABUSE PROBLEMS WITHIN THE EIGHT D.C. WARD COMMUNITIES, AND TO DEVELOP AND IMPLEMENT STRATEGIES TO SOLVE THESE PROBLEMS.

ALREADY UNDERWAY IS THE NEW COMPREHENSIVE ALCOHOL AND DRUG PROGRAM (CADAC) AT STAINT ELIZABETHS HOSPITAL WHICH PROVIDES RESIDENTIAL TREATMENT FOR D.C. SUBSTANCE ABUSE CLIENTS. IN ADDITION, THE CITY HAS INCREASED ITS OVERALL TREATMENT CAPACITY

THROUGH THE EXPANSION OF ITS CONTRACT PROGRAMS WITH THE PRIVATE SECTOR. A CONTRACT TO PROVIDE DRUG COUNSELING AND TREATMENT SERVICES AT LORTON CORRECTIONAL CENTER AND D.C. JAIL IS IN PLACE. ALREADY ON THE DRAWING BOARD THROUGH ADASA'S PLAN ARE SPECIAL PROGRAMS FOR ALREADY IDENTIFIED AT-RISK TARGET GROUPS. THE PRIMARY GROUP BEING YOUTH. A COMPREHENSIVE YOUTH PROGRAM IS PLANNED WHICH WILL INCLUDE A YOUTH DETOXIFICATION FACILITY, A RESIDENTIAL TREATMENT AND AFTERCARE PROGRAMS. A MAJOR ABSTINENCE PROGRAM HAS BEEN CREATED FOR BOTH YOUNG AND ADULT ABUSERS. A PROGRAM IS OPERATED FOR WOMEN WITH A SPECIAL FOCUS ON THE PREGNANT ABUSER.

DURING THE NEXT THREE MONTHS THE DEPARTMENT OF HUMAN SERVICES, COMMISSION OF PUBLIC HEALTH AND THE ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION WILL MOUNT A SPECIAL SUMMER SUBSTANCE ABUSE PREVENTION AND HEALTH PROMOTION PROGRAM FOR YOUTH RECOMMENDED BY MAYOR MARION BARRY.

THE WORK-PLAN OUTLINES A LARGE EFFORT TO BE UNDERTAKEN, BY THE ALCOHOL AND DRUG ABUSE SERVICES ADMINISTRATION AND THE COMMISSION OF PUBLIC HEALTH TO LAUNCH THE MAYOR'S YOUTH INITIATIVE. THIS INITIATIVE WILL HAVE AS ITS THEME "CAREERS, NOT ALCOHOLISM OR DRUG ADDICTION." THE SHORT-TERM GOALS OF THE INITIATIVE WILL BE TO REACH THOUSAND OF D.C.'S VULNERABLE YOUTH POPULATION WITH IN-DEPTH PRESENTATIONS ON THE CONSEQUENCES OF ALCOHOLISM AND DRUG ADDICTION, AND TO TRAIN A "CADRE" OF ABOUT 500 YOUTH IN DRUGS AND ALCOHOL PEER COUNSELING, TRAINING AND LEADERSHIP. THE INTERMEDIATE-TERM GOAL OF THE INITIATIVE WILL BE TO HEIGHTEN COMMUNITY AWARENESS AND HELP ESTABLISH A BROAD-BASED COMMUNITY CONSENSUS ON THE CONSEQUENCES OF THESE PROBLEMS. (RESEARCH HAS SHOWN THAT A LONG-TERM, COMMUNITY-WIDE EFFORT IS MORE EFFECTIVE IN THESE AREAS, WHILE JUST PASSING OUT LEAFLETS AND INFORMATION CAN ACTUALLY BE COUNTER-PRODUCTIVE). THE LONG-TERM GOAL OF THE INITIATIVE IS TO REDUCE THE IMPACT OF WHAT

MAYOR BARRY HAS CALLED THE "FOUR HORSEMEN OF THE MODERN APOCALYPSE--DRUGS, UNEMPLOYMENT, CRIME AND INJUSTICE," ON THE DISTRICT OF COLUMBIA.

CURRENTLY WE OPERATE 23 PROGRAMS; 13 BY CITY EMPLOYEES AND 10 BY PRIVATE SECTOR CONTRACTORS. OUR PLANS FOR NEXT YEAR CALL FOR THE IMPLEMENTAION OF SEVERAL NEW INITIATIVES. AMONG THESE ARE A RESIDENTIAL TREATMENT PROGRAM FOR YOUTH, A PCP DETOXIFICATION PROGRAM, EXPANSION OF PREVENTION SERVICES TO THE D.C. PUBLIC SCHOOL SYSTEM, A HEROIN/COCAINE INPATIENT DETOXIFICATION PROGRAM, THE ENHANCEMENT OF OUR CRIMINAL JUSTICE PROGRAMS TO BETTER SERVE THE D.C. SUPERIOR COURT, LABORATORY AND DATA EQUIPMENT, AND SERVICES FOR THE YOUTH POPULATION WHO ARE RESIDENTS IN A VARIETY OF PLACEMENTS UNDER THE SUPERVISION OF THE SOCIAL SERVICE COMMISSION - SUCH AS THE RECEIVING HOME, HALFWAY HOUSES AND OTHERS.

I THANK YOU FOR THIS OPPORTUNITY TO SHARE WITH THE COMMITTEE WHAT WE, THE BARRY ADMINISTRATION ARE DOING IN THIS PROBLEM AREA. I SHALL BE HAPPY TO ANSWER YOUR QUESTIONS IF THERE ARE ANY.

THANK YOU.

CLOSING COMMENTS

Senator SPECTER. We are going to have to have you back, as I say, Dr. Mitchell, and at that time I would like your appraisal as to what the resources ought to be for fiscal year 1986. I know you will be operating under the constraints of the Mayor's budget. I appreciate that.

And, Superintendent McKenzie, we will be following up with you as well. We very much appreciate your being here.

And as your Rand Corp. study progresses, Mr. Reuter, we will be watching it very closely.

Thank you all for coming. Let me acknowledge the presence of Dr. David Hall, president of the D.C. School Board. We very much appreciate Dr. Hall being here. We look forward to hearing from him at a later hearing.

SUBCOMMITTEE RECESS

Thank you all, and that concludes our hearing.

[Whereupon, at 1:25 p.m., Wednesday, May 8, the subcommittee was recessed, to reconvene at 12 noon, Tuesday, May 14.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, MAY 14, 1985

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 12 noon in room SD-138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Lautenberg.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

JOSEPH FENTON, EXECUTIVE VICE PRESIDENT, BUCKINGHAM SECURITY

DON HUTTO, PRESIDENT, AMERICAN CORRECTIONAL ASSOCIATION AND EXECUTIVE VICE PRESIDENT, CORRECTIONS CORPORATION OF AMERICA

WAYNE HUGGINS, SHERIFF, FAIRFAX COUNTY, VA, ON BEHALF OF THE NATIONAL SHERIFFS ASSOCIATION

OPENING STATEMENT

Senator Specter. This hearing of the Subcommittee on the District of Columbia will commence on the subject of prison privatization. This is a subject which has long been of interest to me since my days as district attorney of Philadelphia when prison expansion and prison reform was a major topic in the mid-1960's and the mid-1970's.

At that time I had visited all of Pennsylvania's prisons and a number of other Federal prisons. The subject arose as to a new prison construction in the District of Columbia, and it seemed appropriate to have a hearing on this by this subcommittee although I had considered having a hearing by the Subcommittee on Juvenile Justice which has oversight on the Justice Prison Act, but since we are moving ahead now in the District of Columbia for the construction of the new jail, it seemed to me relevant to have this hearing in connection with a District of Columbia activity.

It has attracted a great deal of attention nationwide. It poses some very basic considerations as to the appropriateness of having people sentenced to serve periods of incarceration for crimes; in other words, whether it is appropriate to have them in private custody. The issue arises whether someone who operates a private prison will be more motivated by the private motive than by appropriate care for those in custody, whether infractions of the rules can be dealt with by a private profitmaking organization. Perhaps some mixture would be necessary to have some governmental officials connected with a prison which was privatized from the point of view of adjudicating infractions, making decisions about increased tenure in jail. But the whole question of privatization is very much upon the scene in the United States today as we struggle with the necessity to have economies in operation which have been traditionally governmental, as we take a fresh look as to whether some of the functions which were governmental can be better performed by private companies.

NEED FOR ADDITIONAL PRISON SPACE

There is also a significant question as to the capacity of some communities to float the bonds necessary for prison construction. This may be an appropriate or perhaps an inappropriate way to circumvent that limitation. We do know some very intensive hearings were held in the Judiciary Committee on the subject of career criminals. There is massive need in this country for additional prison space. The legislation I introduced called for the construction of some 200,000 additional jail cells in this country to house career criminals.

A series of expert witnesses will testify that there are in the range of 200,000 to 400,000 career criminals at large that ought to be incarcerated. However, my own sense is that the legislation I introduced calls for the expenditure of some $10 billion for the construction of 200,000 jail cells at the cost of $50,000 each. It is my own assessment, backed by the National Commission on Criminal Justice, Standards and Goals if we can keep 200,000 career criminals in jail, we can reduce violent crime by some 50 percent.

For the matter is difficult at the time of budget constraints. It might be possible to provide for this very substantial outlay through privatization which we will be considering today.

These are all matters, I would think, of tremendous importance to convene this hearing. I would now like to yield to the ranking Democrat on the subcommittee today, Senator Lautenberg.

Senator LAUTENBERG. I have no opening statement, Mr. Chairman. I share your view and concern. I look forward to hearing the testimony of the witnesses.

Senator SPECTER. Thank you very much, Senator Lautenberg.

INTRODUCTION OF WITNESSES

I would like to call our first panel, Mr. Joseph Fenton, executive vice president of Buckingham Security; Mr. Don Hutto, president, American Correctional Association and executive vice president, Corrections Corporation of America; and Wayne Huggins, sheriff, Fairfax County, VA, on behalf of the National Sheriffs Association.

Well, gentlemen, we appreciate your being here and look forward to your testimony.

Mr. Fenton, we will begin with you.

STATEMENT OF JOSEPH FENTON

Mr. FENTON. Senator Specter, Senator Lautenberg, and ladies and gentlemen, my name is Joseph Fenton and I am executive vice president of Buckingham Security.

I come from a family that has been actively involved in corrections for over 50 years. We feel that this hearing would not be in place and we would not be here if corrections, as is, were working satisfactorily. We think there is some overwhelming need in American society today in the field of corrections. We feel that that need focuses down to two areas, either special needs inmates or special needs municipalities. We do not feel that the private sector is or should be in the position to take over the entire field of corrections. We feel that those areas that need assistance, that are not getting assistance, can be best served by the private sector.

Currently there are inmates in the system who are not only receiving poor aid, but are being abused at a price that is more costly than sending individuals to the most expensive universities in the country. We are spending inordinate sums of money to accomplish in reality a negative impact. Many people going to prison are coming out worse off for the experience. We think the underline has to be this basic point, that there is a need that society today is unable and unwilling to meet. That includes doubling the prison population in the last 10 years, putting an incredible strain on the physical facilities, 25 percent of which were built before 1915. There are ethical questions. There are legal questions. There are a multitude of questions pertaining to the details of this issue. The legal questions we think are best solved by legislation being passed which includes regulation of the private sector.

We think that the private sector has shown in its management of hospitals, in the management of universities, in the management of various areas in the United States where it deals with real people needs, that with proper regulation, with qualified people, highly motivated, that a better job can be done than that which is done by the public sector.

Thank you very much.

Senator SPECTER. Thank you, Mr. Fenton.

We will turn to Mr. Don Hutto whose company is one of the leaders in operating private prisons in this country today.

STATEMENT OF DON HUTTO

Mr. HUTTO. Thank you, Mr. Chairman. I would like to point out that today I am speaking primarily in my role as a member of the private sector and not as a member of the American Correctional Association which adopted a policy with regard to private sector involvement. Their policy neither endorses nor opposes private sector management of prisons, but suggests that the marketplace and individual governments should make their own determination, but where such operations are taking place by the private sector, that those opportunities will be required to meet all the same standards that would be required of the government.

In terms of my presentation today, for many, many years there have been a number of programs operated by nonpublic entities for government or in conjunction with government in the corrections spectrum. The vast majority of this activity has taken place in adult community corrections and in specialized care for juvenile delinquents. The vast majority of the operators in this area have been private, nonprofit agencies and other entities for profit that are not normally associated as being correctional companies. The results of these activities have been varied, as most of us know. Some programs have been extremely successful and their performance in relation to the individual client's successful return to society has been exemplary. As in any industry, there have been those programs that have not been as successful.

ALTERNATIVE FINANCING PROGRAMS FOR PRISON CONSTRUCTION

Within the past several years, private enterprise has looked at a much broader and more involved participation in the corrections industry. This expansion has taken place in the area of alternative financing programs for prison and corrections construction, as well as the development of full fledged private corrections management firms.

I would like to differentiate between the two major private sector initiatives within this industry. Those two initiatives are in the area of contract management services and sale/leaseback private financing programs. Many financial entities have developed organizations that either have as their sole or primary function the designing of specialized financing programs for correctional institutions. These companies provide to the government at all levels an opportunity to participate in a number of varying financial vehicles so that their correctional facility needs can be met. The use of alternative financing mechanisms other than general fund tax revenue or general obligation bond issue has become extremely popular because of several factors. These factors include the lack of sufficient tax revenues to support large scale construction programs in the corrections area, the inability to get the public to approve bond issues, and/or general apathy both at the legislative level, as well as the public level.

The sale/leaseback concept or alternative financing approach is purely a financing operation. Companies that specialize in these areas are only peripherally involved in the construction, design, or the management of such facilities. Primarily the companies that are involved in this process are banking establishments or large brokerage or finance houses. The second initiative related to the corrections industry and its interface with the private sector is that of private sector contract management. This particular private sector activity is the one that is causing the greatest amount of public comment and reaction.

ADVANTAGES TO PRIVATE SECTOR MANAGEMENT

It should be noted that private sector management may be for total operation of the facility or specific portions such as medical or food service.

There are a number of distinct advantages that are inherent to this particular concept. Private corrections management firms offer the availability of private sector capital, a much faster speed of response to a corrections problem and/or issue, contractual program and management guarantees, a guaranteed cost, and the potential for cost savings at both the construction and operations level. Private contract management firms in this country have developed staff that have exceptionally strong correctional and professional credentials. In the past several years there are a number of examples where the private sector management firm has been able to bring all of the advantages discussed previously to a particular project. The governmental entities that have been involved in such contracting are reporting that the service delivery as well as the economies that were projected, have met and/or exceeded the government's expectations.

Some of the companies that are involved in this particular approach to meeting the corrections management needs of all levels of government have also guaranteed to indemnify the government. This simply means that if there is a suit that has been filed against the operation of a privately run facility that contractor will litigate the suit and will be responsible for payment of any damages that may be awarded. The cost savings of such a guarantee to government is incalculable but one can readily see that this could drastically improve government's position in regard to budgetary control.

The future of this new private sector initiative is one that may be difficult to predict However, if the successes of the last several years in this industry by several of its leaders continues, one can safely assume that government has been given another viable tool to use to assist in meeting the public's need for public safety and appropriate correctional activity.

Senator SPECTER. Thank you.

Sheriff Huggins, we look forward to your testimony.

STATEMENT OF WAYNE HUGGINS

Mr. HUGGINS. Senator Specter, Senator Lautenberg, I would be remiss if I did not take this opportunity to thank you for allowing us to participate in this discussion; and second, Senator Specter, you personally, on behalf of the sheriffs of America for the efforts you are making in assisting us in making our job a little bit easier. I guess that we, more than anyone, know that the need for beds in this country is drastic at this point.

I guess the Sheriffs Association's position can be categorized in four general areas, four general topics. First of all, when you cut through all the rhetoric and you get to the bottom line, the two issues in this entire discussion are life and liberty. We happen to feel that they are the two most precious possessions that any citizen in this country have. Their most precious possessions are their liberty and, second, their life.

When the court makes the decision that a person is to lose their liberty, and their very livelihood, their essence of being is to be turned over into the hands of government or someone, whether it is a private contractor or sheriff or whoever it might be, the gravity of that decision is such that we ought to be very, very careful about turning this responsibility over to the private sector, to the public sector or whatever sector might earn this responsibility.

Second, we feel that the cost, certainly, has become an issue. There is much talk that the private contractors can do it cheaper than the public sector can. Well, to coin an old phrase—and excuse my grammar—"Cheaper ain't necessarily better." One would suggest, if they could cut costs, they have to cut costs to make a profit. That is why Mr. Hutto and Mr. Fenton are in here, to make money or, I am sure, they wouldn't be doing it.

The average salary of a correction officer in this country today is $10,780. Since staffing and manpower are the largest entity in the correctional budget, how can you cut it? Where do you start? How can they get correctional officers that they can hire for less than $10,780 who are as good? I am sure they would insist on receiving better sums than we currently are paying our officers today.

Where would the cost-cutting come? Perhaps in training?

I as a sheriff happen to think that there is not enough training going on in corrections today and therein lies one of the reasons why we have the problems we have. Some of our private contractors would suggest they can be more efficient and cost saving and they can cut through redtape.

Some of the redtape they suggest is nothing other than public procurement policy and the legislative mandating, or regulating, if you will, the handling of the tax dollar, and to eliminate or sidestep and safeguard, some of the safeguards the government has installed to safeguard the tax dollar is spent wisely, in my opinion, is not a desirable situation and I, as a taxpayer, would resent the thought that a private contractor can circumvent what the government feels is an appropriate way to safeguard the tax dollar.

COMPARING COUNTY SERVICES WITH PRIVATE CONTRACTORS

When I took office in 1980 in Fairfax County, I asked two private contractors to come into my jail, one to look at the food service and the other to look at the medical service and to give me a proposal—not that I was interested in obtaining their services—but I wanted to see on a firsthand basis what they could offer.

In the area of food, the food service contractor could not provide the food service that we were providing at the price we were providing it for, nor could he guarantee the quality nor the quantity that was being delivered to the inmates at that time.

Second, the health service contractor that came in at that time looked at our health program and refused to offer a proposal. They said, "We looked at it. There is no way we can match what you are doing, and we are not going to waste our time."

We had no further contact with either one of them. So, on the local level it indicates to me, at least in Fairfax County, that the privatization of certain services cannot match what government is already doing.

In the food area I would like to address briefly the legal consideration. Some private contractors have suggested by giving it to us that we can, in some cases, eliminate the liability that government incurs as a result of running a correctional facility.

Well, I think that would have to be decided by the courts and not by private contractors and not by government. But in my experiences in the courts over the last 16 years since I have been involved in law enforcement and corrections, I find it hard to believe that government can relegate itself or devoid itself of the liabilities it incurred from the statutory requirement of running a jail.

I think the bottom line is that whoever runs the jail, the government is ultimately responsible for what happens there.

NEED FOR CONTRACT BETWEEN GOVERNMENT AND PRIVATE CONTRACTOR

Second, a contract would have to be developed between the government and the private contractor.

If you know anything about jail operations, and Senator, I heard you expound upon the experiences you had as a prosecutor and the jails you toured and the prison systems you looked at, you can imagine and you can know well how detailed a prison operation is. You have such minor details to control as natural daylight, the quality of water that the inmates drink and the details go on and on and on. It seems to me that the contract would have to be so detailed and so long that government would then have to set up a separate bureaucracy to monitor the contract to make sure that every aspect of the detailed contracts were being met; so on the one hand we are trying to eliminate a bureaucracy, whereas on the other hand, if this is to work, if you had any chance, you would have to create a watchdog bureaucracy to make sure that the private contractor was working.

AREA OF MANDATED RESPONSIBILITIES

Finally, in the area of legal, I have questions that I do not have an answer for. Should private citizens be able to incarcerate private citizens?

Should private citizens have the right of deadly force over the people who are incarcerated there? And I think there are a number of other questions.

Finally, the fourth area is kind of a catchall area of mandated responsibilities.

While we feel that government is responsible for providing many services, we feel that there are three prime services that the government has to give to the public, to provide to the public that there can be no substitute for the government providing. One in national defense.

Second is justice or the administration of justice; and third, we feel government is responsible absolutely in total for public safety, "public safety" meaning law enforcement and corrections.

In a New York Times article by Marty Tolchin who happens to be here today, back in February he stated that some private companies are as they say "insulated from public pressures and free from political interference."

In my opinion, this quote is the most important reason why jails should not be privately operated.

NEED FOR PUBLIC AND POLITICAL INVOLVEMENT

One reason why corrections has had its problems is because of a lack of public and political participation and awareness. Only in the last 5 or 10 years has the public and the political force started to get involved. Now to suggest that this is not desirable and there should be less involvement on the part of these entities, to me indicates a "Judge Roy Bean mentality" toward public safety.

Finally, we feel that if government were to live up to its responsibilities, if government were to go ahead and appropriate $10 billion and to build 200,000 beds rather than try to devoid itself from its responsibilities, that many of the correctional problems that we are facing today, sheriffs-correctional administrators, would vanish, would absolutely vanish.

I thank you very much for an opportunity to appear here today.

REHABILITATION OF FUNCTIONAL ILLITERATES

Senator SPECTER. Mr. Hutto and Fenton, one of the great problems in the correction system is that it does not correct. That is the name it is given—correctional. We release functional illiterates without a trade or skill and then act surprised when they return to a life of crime. We should not be surprised.

A great difficulty in entrusting correction systems to private hands is that the private parties are not going to be required to do more than government. In the District of Columbia in a pilot project, we have started an effort with $22 million appropriated to provide vocational training with basic educational skills so we do not release them without the basic skills.

I introduced legislation in the Senate which called upon the States not to grant parole to anybody who is a functional illiterate without a trade or skill because he will go back to a life of crime. Correctional facilities fall far short.

Should not we be trying to get our existing facilities to do more instead of privatizing which would encourage private institutions to do no more, if as much, as the government-owned institutions?

Mr. Hutto?

Mr. HUTTO. Senator, thank you.

First of all, I feel very strongly that we are not talking about privatizing corrections. This is a word that has become very popular and very faddish. We are in fact talking about contracting for certain kinds of services by government from the private sector. We are still talking about government control. We are not talking about relinquishing any kind of government authority. Government has to control and make a contract. It takes two parties to make a contract. The conditions that have to be met as a part of that contract as specified within it and should be.

Senator SPECTER. How would you handle the part of the contract that calls for rehabilitation?

Mr. HUTTO. The contract forces the government to do something it usually does not do. It forces the government to write into the contract or create a position as to what it wants to accomplish. It is not uncommon to find that there is no real written documentation as to what the purposes or goals of that facility are. I would support heartily the writing in the contracts and support heartily whether publicly or privately managed that we have the kind of programs that you are talking about. I do not think it is eager to support the public sector and do more in the public sector managed facilities or go to the private prisons. I see no reason why the two positions are contrary. We should do the same kind of things whether publicly or privately managed.

AUTHORITY TO IMPOSE PUNISHMENT

Senator SPECTER. Mr. Fenton, if you have an inmate misbehave in prison, and there is a quasi-judicial governmental functionary making a determination of the violation of the rules of conduct, the solitary confinement of an inmate, it is appropriate in your judgment to have the State delegate to a private corporation the responsibility to make a quasi-judicial determination and imposition of punishment?

Mr. FENTON. Excuse me, Senator. We think the State's position is to contract with the private sector for a quality of care that, a minimum quality of care, that the State finds desirable. When it comes time for concerning the police power, we think there has been a precedent in the past where the legislation has given correctional people who are not paid by the government the authority to exercise the police power.

As a rule in the elements that we have studied, we feel that we would take again special needs inmates from among jurisdictions, should it require such things as solitary confinement, and we think that we would need to go to the jurisdiction that, in fact, sent the inmate to us and have their participation in any kind of extensive extra punishment beyond that which the court had originally administered.

Senator SPECTER. I will pick up on that. I will yield to Senator Lautenberg.

CORRECTIONAL OFFICER WAGES

Senator LAUTENBERG. Just very briefly, I wanted to ask the sheriff a question.

You said the average wage of a correctional service employee was——

Mr. HUGGINS. $10,780.

Senator LAUTENBERG. In order to get an average, you have got to have a significant number of people paid below that?

Mr. HUGGINS. Yes.

Senator LAUTENBERG. As a full-time correctional officer?

Mr. HUGGINS. Yes, sir; in the State of Virginia it is kind of ironic. I use that term because in Fairfax County, right across the river, my deputies start at slightly over $20,000. With overtime they will make $21,000 the first year. That does not include health care, retirement, and other benefits we provide. However, their counterparts in southern Virginia are making $12,000 with no benefits.

Senator LAUTENBERG. You just talked about the lower-paid sheriffs which is $12,000. Where did we get below the level of $10,700 so we average below that, do you know?

Mr. HUGGINS. There are some States. I am trying to recall the study I read from. I hesitate to lay the blame on any particular State. If you look at South Carolina and West Virginia, those are two of the lowest paying States.

Senator LAUTENBERG. How much?

Mr. HUGGINS. I am thinking in the neighborhood of $8,000.

Senator LAUTENBERG. So there has to be a significant number if counties like yours that are paying $21,000?

Mr. HUGGINS. Most correctional officers are making in the $11,000 to $12,000 range. There are a few that are skewed extremely low or, like us, are skewed extremely high, but they are washed out.

Senator LAUTENBERG. A lot are working just barely above the minimum wage?

Mr. HUGGINS. That is absolutely correct.

Senator LAUTENBERG. In your comments you talked about the inability of the private sector to provide some of the care and supervision that is required.

Are people being paid at this level able to provide that kind of care?

Mr. HUGGINS. I do not think so, Senator. I really do not.

Senator LAUTENBERG. So then I really have to question the judgment you are making in saying that we are not going to be able to buy comparable services from the private sector. It seems to me competition is not very strong in terms of what standards you have to meet.

Mr. HUGGINS. If my budget is $10 million a year and if I am paying my correctional officers $10,000 a year, my question to Mr. Hutto would be how can Corrections Corporation of America come in and do it for less? That would be the incentive to Fairfax County, spend less money and at the same time maintain the same level of wages and benefits at the same costs. I do not think they can do it.

Senator LAUTENBERG. I will ask Mr. Hutto to respond.

Mr. HUTTO. First of all, it is a mistake to assume that the private sector attempts to effect efficiencies. It is quite the contrary. We think we need better employees, better qualified and better training and paid employees. They are the strength of any organization particularly in the correctional area. Those are not the places where you effect efficiencies. You effect efficiencies where you have well-paid, highly trained employees. We think that is extremely important. I would agree that sheriffs or deputies with the State Department of Corrections are generally, woefully underpaid in relation to their responsibility on a day-to-day basis.

Senator LAUTENBERG. So therefore we see what is generally assumed to be inadequate treatment of those that were turned into the prison system for rehabilitation. That is certainly fair to say? It is a universal view, is it not?

Mr. HUGGINS. The deputy sheriffs make less than the police officers. If you have a person looking for a job, a qualified person, a good person, a person well-educated and you are that person, where would you go. You would go to the job that paid the most money. We are not getting the best of people.

Senator LAUTENBERG. The example as to Fairfax County does not make the case. We are trying to determine if there is any liability. The private sector can do lots of things better. I listened very carefully to what you said about those services you viewed as being the responsibility of the government. I am inclined to share that point of view.

DISTRIBUTION OF CORRECTION BUDGETS

What percentage of the correction budgets typically go to salaries and personnel expenses versus the buildings and prisoner care?

Mr. FENTON. The question needs to be elaborated on somewhat. There is the reported cost of taking care of inmates and the real cost. The States are recording $17,000 per year for the operational management of prisoners. A real cost would be in the neighborhood of $20,000 for an average inmate. Some are costing $12,000 and some are costing $50,000 and $60,000 a year.

Senator LAUTENBERG. Was it not your testimony that outlined the costs? Unless I am missing something it was between $29,000 and $54,000 a year?

Mr. FENTON. Those are special needs inmates who are more expensive inmates—the most expensive are those coming down with AIDS who will be costing up to—— [Laughter.]

Senator LAUTENBERG. The ordinary prisoner, if you can give us that amount?

Mr. FENTON. The special needs prisoner is the prisoner——

Senator LAUTENBERG. What is the cost for the nonspecial needs prisoner?

Mr. FENTON. Nationwide, $15,000 reported. The real cost is in the neighborhood of $20,000 per year per inmate, and that is exclusive of the capital expenditure costs or the cost of the money to implement that capital expenditure. We feel that given that many dollars to work with, we in the private sector can in fact provide very humane services that inmates deserve and still make a profit. We feel that the secret is not in hiring more people at a cheaper wage, but in fact designing a facility to hire fewer people at a greater wage who are highly motivated and highly trained.

Once an institution is designed to be built, the staffing pattern has been implemented. Most of the public institutions were designed when wages were very low. It would take a great deal or a great number of men. However, facilities can be designed and are being designed and we have designed them, which would take up fewer men, we feel, to do a more effective job.

Senator LAUTENBERG. So technology improvements have been made, but there is a lot of plant and equipment around that had to be used where the budget does not provide for scrapping those and building new ones, so that is like the real world.

You cannot do an awful lot, can you, Mr. Fenton, in terms of the private sector reducing those costs—the percentage of inmate care devoted to salaries and direct personnel expenses.

There is a point beyond which you cannot improve or you cannot make it possible. It is OK if you can provide services, but you cannot reduce the wages.

When I heard what the sheriff said, I want to say that I was shocked at the $10,700 average.

Mr. FENTON. We suspect that word. The word "average" gets used loosely by different people. Our experience is more in line with $12,000 or $14,000 a year being the average public paid salary for entry level correctional people.

Senator LAUTENBERG. My time is up.

Senator SPECTER. Just two followup questions.

PRECEDENTS FOR DELEGATING POLICE POWER

You said there were precedents for delegating police power. What do you mean by that?

Mr. FENTON. In the Pennsylvania legislature right now there is an amendment to current legislation which does, in fact, delegate to private correctional people the ability to implement police power. In the State of Arizona——

Senator SPECTER. It has not been enacted?

Mr. FENTON. No.

Senator SPECTER. Has there been any delegation of police power to private citizens?

Mr. FENTON. We think the security people in the airports are two-thirds of the security people in the United States.

Senator SPECTER. Lots of people have private policemen, but that is very different. When you say police power, that is a term of art which means the authority to put in a wideranging system.

When you come to the nub of judicial determination, for example, the question I posed, the determination of an infraction was made, number one, under adjudicatory function.

Do you have any precedent for that?

Mr. FENTON. I did not understand the question. Would you repeat it?

Senator SPECTER. Is there any precedent for a State saying to a private company you may make adjudicatory decision, that is, to determine whether a person is guilty or not?

Mr. FENTON. I did not mean to include that in my definition of police power.

Senator SPECTER. It may be that you could have a privatization and have somebody there to make those determinations, a governmental employee. Maybe you could have it mixed. I do not know any precedent that delegates that kind of governmental authority.

Mr. FENTON. I am talking more——

Senator SPECTER. Custodial service; no problem.

Mr. FENTON. That is all that we are referring to.

PRIVATIZATION OF DISTRICT PRISON

Senator SPECTER. The final question I have is this, is the District of Columbia about to move ahead with the new prison? The Mayor has agreed. It has been a pressing need for perhaps a quarter of a century. We are going to move again.

How would you suggest that we move on the issue of privatization? Are you ready to make a bid?

Mr. FENTON. I do not propose, nor do I ever, that the private sector have a solution for any and all problems. If there is an interest in private sector opportunities in terms of the D.C. government, the best possible way to pursue it is to communicate with those identified in the sector who are in fact attempting to do this.

Senator SPECTER. Assume you were the Mayor or chairman of the District of Columbia Subcommittee. I would ask for the proposals from the companies interested. Is your company one such?

Mr. HUTTO. Yes, certainly.

Senator SPECTER. We may ask you that question. Not today, I do not want to be construed as asking you that question. It will perhaps require a quorum, something we do not often get.

Mr. Fenton, are you interested in making a bid if the District of Columbia is looking for a bid?

Mr. FENTON. Yes, sir.

Senator SPECTER. Do you think you could do it better and cheaper?

Mr. FENTON. If we could ask the questions, it would help with the answer a great deal more. We think the private sector does better when focusing on the particular area of questions. We think that the District of Columbia has specific special needs inmates who would probably be better served by the private sector than they are now.

PREPARED STATEMENT

Senator SPECTER. Thank you. We appreciate your being here. We have your complete statement and it will be placed in the record.

[The statement follows:]

STATEMENT OF JOSEPH FENTON

The first requisite of any private enterprise is to find a need and fill it. Corrections as we currently know it is in great need. Nationwide prison populations have doubled in ten years to nearly 500,000 inmates. Per capita operational costs are increasing as dramatically as the population increase, and construction costs are skyrocketing. Overcrowding has passed the stage where in many systems the fact of incarceration is in itself cruel and unusual punishment.

During this period of dramatic change everyone who is seriously interested in upgrading the quality of corrections must look for new alternatives. The status quo is unsatisfactory. Prisons are unhealthy. Tax payers are resisting increases to pay for new construction and additional operating costs. Both staff and inmates suffer with inadequate facilities, overcrowding, and insufficient services. The ultimate loser is society which is paying a huge price for a system that isn't working.

"Ain't it awful!" Someone should do something. Many are trying. Dedicated employees from correctional officers to commissioners work under difficult situations. Civil libertarians file law suits in efforts to improve situations. Entire correctional systems have been placed under court order. Prisoners have suffered, petitioned and rioted. Yet the problem continues to deteriorate.

More help is needed. New resources are required. New approaches need to be tried. Perhaps in this society that is driven by private enterprise, we can involve elements from the private sector to contribute alternatives.

In the previous twenty years we have witnessed various elements of the traditional public prison go private. Food service is an obvious example. Others include education, laundry, medical services,legal aid, even industrial programs. Much of the juvenile services are now in private hands, as are halfway house programs, and in recent years, INS has contracted out care and custody of illegal aliens.

Generally the reviews have been good. Each breakthrough has required caution. There have been serious questions that enlightened observers have held each step of the way. New programs frequently have bugs. There has been a period of trial and error. Yet today few would go back to an earlier era where the state alone was responsible for all aspects of custody for all elements of the incarcerated population.

Is there a next step? Have all reasonable private alternatives been exhausted? Should we stop where we are?

We think not. There are special needs inmates who are receiving the least positive benefits of a correctional experience at a disproportionate cost to the system. This group includes prisoners with medical, mental and handicapped limitations; those in administrative segregation, geriatrics, protective custody and the condemned. According to a recent study by Criminal Justice Institute, the real average daily costs for these special needs inmates varies between $80.00 to $90.00 for geriatrics and protective custody inmates to $130.00 to $150.00 for those with medical problems. This translates into an annual cost ranging between $29,200 to $54,750 per inmate.

With limited dollars at our disposal, is there a better alternative? Can we provide better than the existing choices at the same or reduced costs?

Buckingham Security has devoted years to these questions, and is satisfied that it can make a major contribution in the care and custody of special needs inmates, at less than current costs, and provide superior alternatives with less restrictive confinement and more positive opportunities. Its earliest efforts are focused on protective custody inmates who currently constitute seven per cent of the nations prison population. This group generally lives a most restricted regimen with few to none of the more positive aspects of normal prison life. Frequently protective custody inmates live a life of maximum confinement for 23 hours a day with no opportunity to mix with the general population at meal time, for recreation, class rooms, library or productive industry.

Although as a group these inmates pose little threat to themselves, other inmates, staff, or to escape, they, in effect, evict the most troublesome inmates from the most secure cells and occupy these cells for the duration of their sentence. While receiving minuscule positive effects from their incarceration, at magnified costs to the state, this group compounds the difficulties of an administrator by removing high security cells from their intended purpose of holding unruly or unmanageable thugs.

Over a period of eight years, with the aid of numerous consultants and professionals, Buckingham addressed the problem of providing a significantly less restrictive, more productive, period of incarceration for this truly most abused element of the prison population.

Ethical and legal questions abounded. Administrative and technical problems were obvious. Political and economic issues had to be met. Yet the insidious problem of isolating over 30,000 inmates for long periods of time, years, just for their own protection warranted the extraordinary effort.

Ethical issues go to the very root of a system that includes imprisonment as one of its basic means of maintaining order. Doesn't this democratic society take as a fundamental tenant that we are all free men, born equally under the eyes of God? What right has the majority to impose its views on a minority? Who is without fault that can, with impunity, cast the first stone, or for that matter the second or third? Who are we to judge another guilty? Shouldn't we walk in another's moccasins at least a mile before drawing conclusions about his actions? Doesn't the Almighty give? Shouldn't the Almighty be the one to take away?

Apparently we have concluded that in an imperfect land peopled with imperfect beings, there must be imperfect albeit reasonable solutions. Man has created laws that comply with his understanding of right and wrong. In this country we try the accused by a jury of his peers. If found guilty we restrain his freedom.

Prior to an enlightened solution designed by the Quakers of Pennsylvania in the eighteenth century, our forbears took a most harsh position toward lawbreakers. They were hanged, drawn and quartered, exhibited for public ridicule, whipped, banished, branded, or maimed. Knowing the rich value of silence, the early Quakers designed a way for the guilty to be removed from society and held alone in silence with only the word of God at their disposal. When through time, contemplation, and prayer, an offender became penitent, he was released to reenter society. Thus was born the American penitentiary, which up to that time was the most enlightened form of dealing with those found guilty of breaking the laws of the land.

Over the next two hundred years, various other systems, both private and public, have evolved to humanely and effectively attempt to deal with this problem of incarceration. A historian might view a cycle of reform, benign neglect, sometimes not so benign neglect, incompetence, cruelty, reform, etc.

Never has this society claimed that the public sector has a monopoly on ethics or that the public sector alone has the duty to enforce the laws or carry out the will of the court. Depending on the needs and the available resources, the flow of responsibility has shifted back and forth between the private and public sectors. Today in the United States nearly two thirds of those employed in security are paid by the private sector. We have concluded that incarceration and corrections is a necessary evil whose burden is to be shared by all elements of society, public and private.

Few areas of life are more litigious than corrections. Legal issues abound. Fundamental questions include: Can private companies legally maintain custody of convicted felons? Can the state transfer custody to the private sector? Can inmates be transported over state lines? By what authority? Who is liable? To what degree ?

What are the rights of inmates? Do the rights change with a private jailor? Who inspects the facility? What standards apply? Are there separate standards for private prisons? Who imposes sanctions ?

Is separate legislation required? What should it include? How specific should it be?

Clair Cripe, chief counsel for the Federal Bureau of Prisons has said that he finds no legal impediment in federal law to prevent private corrections. Most state attorney generals contacted by Buckingham agree. Some prefer the enactment of enabling legislation. Chief Justice Warren Burger has long advocated private prisons.

Buckingham's legal counsel has exhaustively researched the issue. There is very little case law on the books that directly deals with private corrections. That which exists suggests that the state can contract out duties but it cannot contract away responsibility. On the other hand the private vendor is responsible for his own acts and omissions.

Buckingham has accepted the Chief Justices' advice to proceed with caution in implementing its program.

Administrative problems abound. What group of inmates have the greatest need? What states or municipalities require the most help? How can Buckingham provide the most meaningful service?

Should Buckingham be a profit or not for profit corporation? Where should a central office be? What are appropriate financing vehicles? Where should correctional facilities be constructed ? How large should they be? Should they be for single or multi-jurisdictional clients?

The questions continue indefinitely. Precedents are being set. Should the private sector merely ape the public correctional institutions? Where is there room for improvement? What are the most serious flaws with the status quo? Who should be on the board of directors. What is their liability?

After the fundamental questions are answered, there remain all the issues of any beginning organization. Systems must be designed and implemented. Budgets prepared and approved. Marketing carried through. Sites selected. Personnel hired. Contracts signed. Then the real work begins.

The basic problem with the correctional system in the United States today is that it isn't working. The prison population has doubled in ten years. Most major cities are unsafe especially at night. Few of those incarcerated reenter society better prepared to be productive members. The annual national average reported cost per inmate approaches $15,000 per year. The real cost is substantially higher.

The trick that Buckingham sees is to make a difference. Design a program that works and that is cost efficient. Special needs inmates are an obvious place to begin. As a group these inmates currently receive the least positive benefits of an incarcerated experience and are the most costly.

Immediately following policy decisions, technical problems begin. A multi-jurisdictional prison must satisfy the specific demands of each jurisdiction. Whose standards apply? We choose A.C.A.

How can one maintain an open institution with protective custody inmates? How can programs be designed for inmates of varying security levels? What are the best hiring practices? How can the best training be implemented? At what population is a prison most effective? How important is the physical design? How important are the programs? What is the best balance of care with custody?

Thousands of administrators, staff, correctional officers, and inmates have been interviewed. Elected officials and concerned citizens have been consulted. Specialists including penologists, civil libertarians, attorneys, psychologists, architects, and accountants have been queried at length. Out of all the above a program evolves.

Developing a workable solution for one of the worst abuses of the correctional system is a step in the right direction. Being able to implement this solution is a much larger step.

Politically we live in a polarized society. We identify ourselves as conservatives or liberals, Republicans or Democrats, members of the establishment or anti-establishment.

We've learned to distrust each other. Conservatives instinctively shrink from liberal issues and vice versa. Republicans vote as a block as do Democrats. On matters of prison reform we are also polarized.

Speak of the evils or abuses within the current system and one segment of our population pricks up its ears with interest; another segment reflexively tunes out. Talk of finances, cost effectiveness and efficiencies creates the same reaction. The difference is only in who is tuning out.

We have knee jerk reactions toward prisons. At its extreme, one element of society wants to "lock the bastards up and throw away the key." Another element sees all inmates as unfortunate victims of a deranged society. Their view is that prisons should be abolished. Understanding, education and rehabilitation are proposed to replace these archaic institutions.

The middle ground is abandoned by the zealots. It is this abandonment which has contributed to the present awful problem. Distrust and animosity have replaced respect and understanding. Much time and energy have been focused on legal, technical issues. Individual limbs of specific trees have been carefully trimmed while the forest is nearly destroyed.

It is in this context that reformers must operate. One group seems to believe that a required credential for prisoner care is to be a card carrying member of the American Civil Liberties Union. Another group dismisses all civil libertarians as "do gooders".

There are state employees who look upon prison care as their personal turf. All intruders whether representing the legislature, the judicial, interested citizens, clergy or whatever are at best to be tolerated. Some unions have taken this attitude. The problem of the inmate and the problem of society are subordinated to the parochial issue of jobs, pay and seniority.

If the system were working, private entrepreneurs would leave well enough alone. It is not. All parties to the problem need to be educated. Patience, understanding and good will are required. The plight of the prisoner is no longer hidden behind stone walls. Millions of dollars currently spent on law suits might be more productively allocated for constructive programs. There are alternatives that go beyond the courts.

Buckingham Security, in a bold move, has designed two private, regional, protective custody facilities. Each facility, when fully constructed, is designed to house 650 inmates from numerous states. Both the Pennsylvania and Idaho sites were selected to be central to a targeted region. Both Riverhaven in Beaver County, Pennsylvania, and Magic Valley Haven in Gooding, Idaho are structured to be "open" institutions where inmates will have the advantage of a fully programmed day. Restricted cell time will be limited to eight hours at night.

Buckingham's program effectively makes general population inmates out of special needs, severely restricted, protective custody prisoners. It gives the inmate a vastly less restricted life with an opportunity to develop positive habit patterns. The state realizes a substantial savings from its current real cost. The most severe punishment available to Buckingham is to return those inmates who will not respect the rights of others to the sending state from whence they came.

A strong effort is underway to bring meaningful, productive industry to these facilities. Current legislation severely restricts the transport and sale of all prison made goods. Buckingham would like to see qualified inmates productively employed in areas that would not compete with the existing labor market. Inmates should be paid for this labor and then charged for some of their expenses. A savings allotment would be part of the program. Nothing is more insidious to the physical, mental, moral and emotional well being of a healthy human than enforced idleness.

We all are products of our habit patterns. These habit patterns are to a large degree transferable. Prisoners held in protective custody are generally prohibited from most of the constructive prison programs. When released they have the habit pattern of idly sitting in fear. They have the option upon release of immediately developing new constructive habit patterns or falling back into a familiar routine that can only lead to further problems.

The designed program in both Riverhaven and Magic Valley Haven is to have inmates daily employed by a not-for-profit industry. The primary purpose of the employment is to develop and reinforce positive, productive habit patterns which can be utilized on the outside. Peripheral benefits include the enhancement of self worth, a stash of money, reduced expense to the state, and partial support of dependents. Industries currently being scrutinized for this program include those whose labor is now exported off shore.

For this industry to succeed political support is needed from all of those who have an interest in prisons and prisoners. If the common goal is the betterment of society through our work with inmates, we can accomplish much. If we continue to mistrust each other, seemingly on principle, the loser will be the individual inmate and the greater society.

Politics at best is the art of persuasion. At its highest level, through education, the highest motives are stimulated. At this point in time, we have the attention of the politicians. The tremendous costs of prison construction and of prison programs have served as the necessary two by four to get this attention. We who live on a daily basis with the problems of prisoners have a unique opportunity to think, speak and act with one voice. We need to focus on the larger areas on which we can agree and effectively generate legislation.

Because inmates represent no meaningful political constituency, their case has never been effectively represented. On the other hand 98% of all prisoners reenter society. Many utilize the prison experience as a finishing school in a career of crime. The world of corrections is intended to positively modify criminal habit patterns. Those involved in this world have been so fractured that they have nullified each other. Corrections is not meeting its intended purpose. Perhaps the private sector which has a vested interest in the success of its programs, can serve as a coalescing force in bringing together the various factions.

Economics is a driving force in our society. No solution can long be sucessful which ignores the "dismal science". In the United States our most pressing problems have long been entrusted to the private sector whose role is to solve the problem at an acceptable, competitive cost while earning enough money to stay in business. Those who don't succeed in meeting these requirements don't stay in business. Its a cruel, harsh world, but it works. It is not unlike nature whose underlying law is survival of the fittest.

Even the most personal and sensitive areas of our society are most effectively served by the private sector . We pay private physicians to assist at birth and throughout life. We pay private teachers for education, private grocers for food, psychologists for therapy, architects for design, attorneys for counsel etc.

Private hospitals house our sick, private schools educate our young. Generally it is conceded that our most effective, efficient, even our most prestigious institutions are in the private sector.

Is there a stigma in our society for those who serve if they earn a profit? Do we think less of our physicians, teachers, attorneys, scientists, or for that matter bricklayers , soldiers or carpenters if they charge for their services?

It may be conceded that our most effective institutions are private, but are they as ethical?

Are public institutions inherently more moral? Are private institutions a necessary evil? Would we really prefer that our society be served by public institutions?

The Soviet Union and its satellites have answered these questions one way; the United States another.

What about correctional institutions? The juvenile sector has been served for twenty years by the private sector. Many of the serving private corporations have been not-for-profit. Some have been for profit. Is there a fundamental ethical difference? Are for-profit corporations inherently more or less ethical than not-for-profit corporations?

Buckingham has chosen to be a profit making corporation. It believes that the problems in corrections are so huge that all the resources of this country should be marshalled. States now spend more money for the average inmate in one year than is spent in the most expensive colleges for a single student. The ratio of successes are not comparable. The inmate who comes through the system unscarred by the experience is the exception.

Special needs inmates may cost two, three, four, even five times the expense of an average inmate. Too frequently the benefits are non-existent.

Is corrections inherently a dead-end street? Is it fundamentally necessary for our states, for each of us as taxpayers, to spend billions of dollars annually for minuscule results? Is there anyone who thinks the present system is working?

The private sector is asking for the worst cases. An overcrowded state system is happy to be free of its most aggravating problems. Let's proceed cautiously, but let's proceed. Let's monitor the results. The private sector claims that by specializing with special needs inmates or special needs jurisdictions, it can do a more effective job for the client at a reduced cost. The remainder of the present system will be healthier for the relief. Can the profit motive really work? Is it true that private correction is an idea whose time has come? Now is the time to find out.

BIOGRAPHICAL SKETCH

Joseph Fenton

Joseph Fenton, Executive Vice President of Buckingham Security Ltd. graduated from Cornell University in 1961. As an undergraduate he was honored as an Academic All American in football. He served as a United States Navel Officer in underwater demolition from 1962-1965. He has been involved in the early stages of the start up of a pipe line fuel carrier, rigging company, minor league football team, real estate and construction company. He founded the Aquarian Age Yoga Center in 1970 and served for 9 years as its president. He was raised as a prison "brat". His father worked for 35 years for the Federal Bureau of Prisons and his brother was employed for 25 years by the same system. He has taught yoga in several prisons and jails.

DEPARTMENT OF JUSTICE

STATEMENTS OF:

RAYMOND C. BROWN, DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS

JAMES K. STEWART, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE

INTRODUCTION OF WITNESSES

Senator SPECTER. I would like to turn now to the panel consisting of Raymond C. Brown, Director, National Institute of Corrections and James K. Stewart, Director, National Institute of Justice.

STATEMENT OF RAYMOND C. BROWN

Mr. BROWN. I do not have a prepared statement. I was asked to respond to questions and answers. I want to bring out a point about privatization. We went through this many years ago, as most policing was then performed by public agencies. Now there are private agencies doing a great deal. There are now more private than public police, so this is not something that is new.

Senator SPECTER. When did private police first come into being?

Mr. BROWN. There have been some for a long time. The increase started in the early 1950's and late 1940's.

Senator SPECTER. Private police?

Mr. BROWN. Yes

Senator SPECTER. The Pennsylvania Railroad Police Department goes back a long time.

Mr. BROWN. Yes; there were private police forces from almost time immemorial. But the thrust, where there was a national movement, was in the early 1950's to where private police now exceed the number of public police.

Senator SPECTER. Let us turn to Director Stewart and see if he has some comments.

STATEMENT OF JAMES K. STEWART

Mr. STEWART. Thank you. I congratulate you for holding the hearings. It is very important. We are continuing to sponsor research on drugs and crime, both of which relate to your interest.

PRISON CROWDING NO. 1 PROBLEM

The National Institute of Justice conducted a survey of criminal practitioners in 1983. The 1,400 who responded identified the No. 1 problem in the criminal justice system as that of prison crowding. They had to take a look at the entire system.

Senator SPECTER. I agree with that. It is the No. 1 problem. There are failures all along the line in the criminal justice system. I would agree with your characterization that absence of prison space is a No. 1 problem. Each year I introduce legislation for more money for prisoners. This year I did not do it. Last year Senators D'Amato and Hawkins joined me to add $600 million over a 3-year process. I discussed it with Attorney General Meese both on and off the record, but budgets are so tight everywhere that prisons are not being built. Many prisoners are released in advance of their prison time.

At this table judges have testified that they do not sentence to jail where they would, had there been sufficient prison space.

What do we do as a society? We are not providing sufficient prison space.

Mr. Stewart, what is the answer?

Mr. STEWART. We need to provide a series of options, look at the entire corrections system and not foreclose, but to look at what offers the best options for individuals at each level.

At the Federal level we are providing for the transfer of surplus property and we are trying to make available other facilities so we can provide greater space. In the last 4 years, the prison population has dramatically increased and yet we were able to provide additional space. That is why we had a conference of 250 experts from across the Nation on privatization in corrections because that is one option that is receiving increased attention.

Senator SPECTER. I understand your institute has not taken a position on whether you favor privatization?

Mr. STEWART. That is correct.

Senator SPECTER. But you think it is worth a score?

Mr. STEWART. We certainly do.

Senator SPECTER. Also national corrections?

Mr. STEWART. Yes.

Senator SPECTER. You think it is worth a score?

Mr. STEWART. That is correct.

Senator SPECTER. What about guidance?

Mr. STEWART. We can give guidance. We will let the decision rest with you. You are a representative of the people. Currently there are some alternative steps starting in the area of privatization of corrections. They ought to be more carefully evaluated so we can provide you with the information.

Senator SPECTER. How long would it take?

Mr. STEWART. Probably another 12 months. We have only had the first look across the Nation.

Senator SPECTER. Could you cut it to 6 months?

Mr. STEWART. Yes.

Senator SPECTER. Three months?

Mr. STEWART. Each time we cut it, our confidence level on figures goes down.

EARLY RELEASE OF PRISONERS

Senator SPECTER. It would be helpful. We may proceed to take a look in connection with the District of Columbia prison. It is a major matter. There is no reason why we should not take a look at it. Senator D'Amato and I have taken a look at Riker's Island where they released 1,300 men and they went out and committed a lot of crimes. There was a major problem. There is a major problem in Pittsburgh, PA. People are being released prematurely. It is really an epidemic. We need to accelerate the studies. The question we asked Judge Lasker is whether a judge sitting in his role as a U.S. District Court judge should have authority to deal with prison systems. In Philadelphia in the case of *Judge Carol* v. *Mayor Tate*, the courts compelled the Philadelphia City Council to build or support a judicial decision far reaching for judicial requirements, ordering the legislature to do its job as the judges thought.

We have to reach some agreement. You men are in critical spots. We would certainly welcome your recommendation as early as possible.

Mr. STEWART. Are you asking for facility management or are you looking toward construction or are you looking toward the employment of prison industries? All of them become interrelated.

Senator SPECTER. All of the above.

Mr. STEWART. OK. We have a pretty good track record.

Senator SPECTER. In rehabilitation?

PRISON INDUSTRIES

Mr. STEWART. No; prison industries. In the areas of factories within fences——

Senator SPECTER. What is the good record?

Mr. STEWART. The 1,400 people that have been employed by private. businesses inside the walls of prisons.

Senator SPECTER. If they are set up, but they are not set up very broadly.

Mr. STEWART. That is true. Recent legislation would provide for 20 additional programs. Some barriers have held it back. We have the chief justices behind that. You indicate in order to have literacy and a life skill, more must be done. The costs must be reduced. In Florida, Pride took over the prison industry. Actually, the State of Florida turned over their prison industry program to Pride. It was a money loser. Pride has taken it over and changed the kind of industries the prisoners were involved in. It is performing adequately. I was suggesting that we might look to that as a reasonable example.

Senator SPECTER. Let me ask you this—we still have another panel—if there is an interest developed by officials of the District of Columbia who have the responsibility for making a judgment on D.C. prisons to consider privatization, would your institute be willing to evaluate the proposals and make the recommendation?

Mr. STEWART. We would consider that.

Senator SPECTER. How about you, Mr. Brown, National Institute of Corrections, would you be willing to consider that and make recommendations?

Mr. BROWN. I do not know. It is an excellent question. I do not know if that is truly our role. We are doing some work with them on their prison situation.

Senator SPECTER. I would ask you if you would be willing to do that because we might advance the analysis of the issue in a concrete way as we are considering a prison. Those considering it will need a lot of analysis and help. This might be as good an indication as any to bring together the best minds in the field.

Mr. BROWN. We could have paid consultants look at it and evaluate it.

Senator SPECTER. If you would consider how you might do that, we would appreciate it.

Mr. BROWN. Yes.

Mr. STEWART. In Kentucky, the State is developing an RFP and also Ocheeknobe in Florida has a large juvenile facility.

Hamilton County in Tennessee has recently employed Mr. Hutto's firm.

Senator SPECTER. Those are all good starts.

Mr. STEWART. No; they are experiences from which we can draw and extrapolate information. Ocheeknobe has done well, in Hamilton County the results are preliminary and a judgment would be premature. Then there is the INS, the Immigration and Naturalization Service. It has contracted for some of this. They proposed a lower cost and more flexibility.

Senator SPECTER. We would appreciate it if you would share your findings with us.

Mr. STEWART. We would be happy to help on the developing directions before this committee.

PREPARED STATEMENT

Senator SPECTER. Thank you, Mr. Brown and Mr. Stewart. We will place Mr. Stewart's complete statement in the record and continue with the next panel of witnesses.

[The statement follows:]

STATEMENT OF JAMES K. STEWART

I am pleased to have the opportunity to review for this sub-committee recent National Institute of Justice (NIJ) work on corrections and the private scetor.

Public officials in many areas of government confront the challenge of matching limited budgets with legitimate demands for service. Increasingly they are looking to the private sector for both example and assistance. For correctional officials, the pressures of needs versus resources are particularly intense. Their problems need no elaboration here: burgeoning offender populations, crowded and often outmoded facilities, resulting inmate idleness, and escalating construction and operating costs. They face, on the one hand, executive and judicial mandates for improved conditions and levels of services, and on the other, vocal citizen demands for swifter, stronger and more certain justice--which often translates into more prisoners for longer terms.

Corrections departments have long relied on many private organizations to furnish specific institutional services or to operate aftercare facilities and programs. Now, however, they are examining private sector alternatives for prison industries programs, financing new construction, and for managing primary confinement facilities. The private sector, in turn, is exploring the potential for applying the management skills, flexibility, and profit motivation of business to a field of public service which appears to have both significant growth potential and social value.

As new proposals and arrangements have emerged, the issues which they raise--of quality, accountability, security, and cost--have been hotly debated in the field and widely reported in the media. Only fragments of experience, however, were documented, and no comprehensive discussion of the issues was available. To inform the debate, the National Institute of Justice commissioned a study to identify the major trends in the privatization movement through a review of the literature, expert opinion, and field practice. Corrections departments in all 50 states were contacted, as well as many private vendors involved in correctional operations and construction financing. The objective was not to conduct an extended research project, but to provide decisionmakers with timely information and to lay the foundation for further work.

The research team reviewed privatization developments in three areas: the participation of private industry in prison work programs, the use of private sector alternatives for financing the construction of prisons and jails, and the involvement of private organizations in actual facility management and operations. Contracting for individual services was not addressed in the NIJ effort because that subject was examined in a separate inquiry funded by the National Institute of Corrections. In February of this year, NIJ sponsored a National Forum on Corrections and the Private Sector to share the results of its study and other related research with over 250 correctional administrators, sheriffs, criminal justice analysts, legislators, and private business representatives.

In popular media discussions, the promise held out for privatization typically includes both reduced costs and improved services. Both the research findings and the experience of our conference participants, however, suggest that expecting a "free lunch" may be asking too much. The NIJ-sponsored research concluded that the greatest promise of the private sector may lie in its capacity to bring the vitality and flexibility of successful business practice to corrections— to mobilize resources to meet immediate needs; to adapt services rapidly to meet changing circumstances; to experiment with new practices; or to meet specialized needs with an economy of scale not possible in a single jurisdiction. Thus, the challenge becomes not one of replacing public corrections functions with private sector counterparts, but rather developing a system which uses both sectors to their best advantage.

Private Sector Involvement in Prison Industries

The area of prison industry and work programs, for example, appears a logical place for private sector involvement. A readily available work force, free or subsidized space and utilities, and the chance to address a major social problem would appear to meet both the corporate and the public interests of the private sector. At the time of the 1984 survey, however, private sector initiatives in prison industries were relatively modest, involving 19 businesses operating programs in nine states. The survey found that of the 34,000 state prison inmates involved in prison industries programs, less than 1400 were participating in industries established or operated by the private sector.

Several factors account for the limited involvement to date. In many States, legal restrictions remain a barrier. The prison environment also imposes costs. Materials frequently must be transported to and from isolated areas, and private businesses can face difficulties in recruiting or retaining skilled supervisors willing to work with prison inmates. The inherent instability of the prison workforce also can create training and scheduling problems. The daily routine of most prisons involves frequent interruptions. Further, the national averages for offenders' terms of confinement is only two years, and during that time an individual offender is often transferred to several different institutions. Crowding pressures now impose additional constraints. Administrators who would welcome constructive work opportunities for their inmates are unable to do so when all available space must be converted to living quarters.

Despite these difficulties, momentum is clearly growing. Existing efforts have soundly established the feasibility of private sector involvement, and, at the time of the survey, seven additional states were exploring private sector projects. A related NIJ study found strong interest on the part of correctional adminstrators, governors, and state legislators in the concept of private sector employment of prisoners and overwhelming consensus on the importance of productive, paid work opportunities for inmates. Over half the states have now adopted legislation calling for some form of private sector involvement in their prison work programs. Further, with the passage of the Justice Assistance Act of 1984, up to 20 states can now have their industries programs certified and thus gain access to interstate markets--a crucial requirement for most private sector manufacturers.

As background, the Prison Industry Enhancement Program was originally established by Section 827 of the Justice System Improvement Act of 1979. It authorized the certification of up to seven state prison industry projects resulting in their exemption from Federal restrictions on the marketability of prison made goods. The twofold objectives are: (1) to allow prison industries to benefit from the expertise of the private sector, expand potential markets, and attract valuable capital; and (2) to provide inmates a wage comparable to that of private sector employees out of which inmates can contribute to any fund established to compensate victims of crime, provide support for their own maintenance in prison and for their families, pay taxes, and save for their own future. The program also provides assurances to both organized labor and the private sector that their concerns about the potential exploitation of prison labor adversely affecting free labor and free competition will be dealt with adequately.

The Justice Assistance Act of 1984 placed the program authority in the Bureau of Justice Assistance and expanded to 20 the number of projects which may be certified. Currently, projects in Kansas, Utah, Minnesota, Arizona, and Nevada are certified.

The variety of private sector industries programs now operating suggest the broad spectrum within which further private sector involvement might be encouraged. The nineteen businesses now involved in prison industries range from small proprietorships to multi-national corporations. Each functions as owner-operator, key investor, or central customer for one or more prison-based program.

Those programs cover 14 distinct product lines and five service activities. As examples, in the Arizona Correctional Institution for Women, inmates make reservations for Best Western; at the state prison in Stillwater, Minnesota, inmates manufacture disk drives and wire harnesses for a subsidiary of Control Data Corporation; and in Florida, a single non-profit corporation, PRIDE, now operates all prison industries within the State. Wages in the private sector-industries program ranged from $.50/hr. to over $6.00/hr., with most inmates earning about $3.35/hr. In comparison, wages reported in traditional state operated prison industries ranged from $0-1.30/hr., with the average inmate in a traditional state-use industry earning only $.30-.60/hr.

The potential benefits of greater private sector involvement in prison industries include reduced idleness, better post-release employment for inmates, and the opportunity for prisoners to make restitution to victims, contribute to family support, pay taxes, reimburse the institution, and generate income for the State. While questioning whether it is realistic to expect to achieve all of these goals simultaneously, NIJ-sponsored researchers concluded that this area of private sector participation may hold the greatest promise for introducing new models of correctional practice.

Financing Correctional Construction

Escalating prison and jail populations have made the need for more facilities imperative. In early 1984, the NIJ-sponsored survey found, at the state level alone, reported plans to spend more than $5 billion over the next 10 years to increase prison capacities by over 104,000 beds.

Traditionally, state and local governments have financed correctional construction through cash (current or accumulated revenues) and/or through general obligation bonds. Cash--or the "pay-as-you-go" approach--eliminates the need to borrow and thus avoids interest charges and long term liabilities. General obligation bonds are generally acknowledged as the least expensive and most secure type of borrowing for state/local governments, but are subject to debt limitations and voter approval. Local units of government, could, until recently, also count on state or federal grant assistance for their jail construction costs. Over the past several years, however, the combination of rising construction costs, insufficient cash reserves, cut-backs in grant programs, constitutional and statuatory debt limitations, and the "taxpayer's revolt" have severely limited the ability of states and localities to finance correctional construction through these conventional methods.

Governments, therefore, are turning to the private sector for access to financing alternatives not subject to debt ceilings or referendum requirements. The NIJ study found the most widely discussed arrangements to be lease contracts in the form of lease/purchase agreements, in which the government purchases the facility from the "lessor" over time, much like an installment sale.

While comparatively new in corrections, the lease/purchase technique is not a dramatic new departure in government financing. It has been used successfully to finance new office buildings in California, port-construction in Oregon, schools in Colorado, and telecommunications systems in Montana and Ohio. Most frequently, the "lessor" is a legal entity (public works board, facilities authority, or non-profit corporation) established specifically to issue revenue bonds or certificates to support the desired construction. The role of financial investment houses, in marketing the new issue, is not unlike their role in marketing general obligation bonds. The unit of government, as "lessee," operates the facility and annually appropriates funds for the lease payments, which cover the interest on the bonds. It obtains title to the facility when the bonds are fully paid. However, since lease/purchase techniques do not rely on new taxes, the unit of government must find other funds for the lease payments. This, in turn, may require cuts in the jurisdiction's annual operating budget.

In many states, specific legislation is needed to authorize the use of lease/purchase arrangements for prison and jail construction. The NIJ research found that enabling legislation had been passed in Illinois and introduced in Arizona, Missouri, and California (California's legislation has since passed). California, Kentucky, and Minnesota had or were then evaluating proposals for lease/purchase, but Ohio was the only state that had acquired beds through lease/purchase financing. Some of the major sponsors of lease/purchase agreements (Merrill Lynch Capital-Markets, E.F. Hutton, and Shearson Lehman American Express) report significant activity at the local level: a $30.2 million jail and sheriff's facility in Colorado, a $50 million jail project in Philadelphia, a $5 million jail project in Tennessee, and a large project in Los Angeles County for a jail and criminal justice training center.

The primary advantages of lease financing arrangements are that 1) they avoid debt limits because, as leases, they contain non-appropriation clauses giving the government the right to terminate the lease at the end of any year; 2) they do not require voter approval because they do not pledge new taxes to support the lease/interest payments; 3) they offer the government flexibility to negotiate the terms of the lease and also savings in both set-up-time and costs; and 4) some variable or floating rate packages currently offer attractively low interest rates. In some cases, the funds raised by issuing such bonds or certificates may be invested at a higher rate of interest, so that the issuer can earn a profit while the facility is being built.

There are two primary areas of concern with respect to lease/purchase arrangements; one philosophic and the other financial. Some observers contend that, because lease/purchase circumvents debt ceilings and referenda requirements, the government is limiting citizen participation in corrections policy and assuming long-term obligations without voter approval. Some accounting authorities in fact consider lease/purchase an installment sale which should be reflected on the government balance sheet, and thus would affect debt capacity. At the same time it must be recognized that often the public simultaneously demands stronger penalties for offenders while refusing to authorize funds for inmate housing. For local jurisdictions in particular, where taxing authority is increasingly restricted, lease purchase arrangements offer an alternative option.

From the perspective of the unit of government, two primary financial concerns with respect to lease/purchase center on interest rates. First, fixed rate lease issues require a higher interest rate than would the jurisdiction's general obligation bonds because they are not backed by the "full faith and credit" of the state or county and are therefore viewed by the financial community as a less secure investment. While a one percent difference in interest rates may seem small, the high costs of large correctional facilities mean that a jurisdiction can pay one million or more extra each year over the life of the lease. On the other hand, variable or floating rate issues, while currently much less expensive, have the inherent risk of sharp increases in the interest rates should there be an upturn in inflation. For states or counties willing to take the risk, the cost--at today's rates--can be significantly lower than general obligation bonds. At the NIJ conference, however, finance industry representatives suggested that where general obligation bonds were feasible, they were preferred--as a more secure long-term commitment for construction financing

Two particular types of lease arrangments have stimulated considerable interest and discussion. The first one focuses or eliminating all obstacles to swift completion of a new facility and has been called a "design-bid-build" or "turn-key" package. Here, the unit of government executes a single lease agreement with a private firm which then handles design of the facility, financing arrangments, and construction; upon completion, it leases the prison or jail back to the governmental unit. The method eliminates the time normally required for competitive selection of an architect, procurement of an underwriter, and public bidding for construction of the facility. While being actively marketed, the technique has not yet been tested for correctional construction. Private sector legal counsel believe it will face serious court challenges over compliance with public bidding laws and with the intent of public works legislation.

The second leasing alternative was initially of great interest to investors. Here, the private sector would finance construction of a correctional facility, but, unlike the lease/purchase arrangements described earlier, the private firm or group of investors would retain an equity interest in the facility--i.e. hold a majority interest in ownership of the prison or jail, which they then leased to the unit of government. The approach offered dual tax advantages. Investors in government buildings were able both to earn tax exempt interest income, and as equity investors, to realize the tax benefits of accelerated depreciation. Recent tax reforms, however, have eliminated the accelerated depreciation write-off, thus reducing the attractiveness of the investment; market participation has declined rapidly. Proponents of the change viewed the dual investment benefits as "double dipping," and the new legislation permits such investors to receive the depreciation benefits only if they earn taxable income operating the facility. While elimination of the tax benefits for private ownership of correctional facilities has curtailed interest in such financing opportunities, it may stimulate interest in ownership and operation of facilities where tax benefits are still available.

Private Operation of Correctional Facilities

Contracting with a private vendor both to provide and to operate a correctional facility is one way to expand corrections capacity without imposing any burden for facility construction on the government. However, the proposition that private contractors should manage prisons and jails--whether in facilities they own or in existing public institutions--has stimulated intense debate and sharply divided opinion. The National Sheriff's Association has expressed opposition to the concept, while the executive director of the American Correctional Association has stated, "We ought to give business a try."

Attachment A summarizes the highlights of facility management contracting activity, occurring during 1984, at the federal, state, and local level. At the Federal level, there was specialized activity in contracting for confinement services, focused primarily on short term detention of illegal aliens prior to hearing and deportation. In mid-1984, the Bureau of Prisons awarded a contract for the operation of a 60-bed minimum security facility for offenders sentenced under the Youth Corrections Act.

There also was developing interest at the local level. Corporate providers reported that a number of proposals were under consideration in the Southern and Western regions. In late 1984, a private company took over operation of the penal farm in Hamilton County, Tennessee, which houses 300 male and female offenders. While the majority of persons there are sentenced males serving a year or less, the inmate mix includes local, state and federal prisoners, with some current inmates serving sentences of up to six years in length.

At the level of State adult corrections with its longer terms, higher security requirements and more complex service needs, the concept of contracting for prison operation has met with a cautious reception. While, in early 1984, the NIJ survey found 28 states using privately operated facilities for secondary housing, such as half-way houses, no State Departments of Corrections reported contracts for prison operation in use or actively being planned. There was, however, considerable interest in learning more about the subject, and in the experience with analogous contracts in other areas of public administration. In late 1984, the Kentucky Corrections Cabinet issued an RFP for minimum security housing for 200 sentenced felons, the first such venture to involve the private sector in housing a mainstream population of State adult offenders. At the NIJ conference in early 1985, a number of participants expressed interest in facility management contracts, particularly for offenders with special needs. One private security firm has announced plans for two such facilities--maximum security prisons in Pennsylvania and Idaho, which would accept protective custody inmates from any state.

Whether these developments will lead to wider use of management contracts for secure adult facilities is not yet clear. In Kentucky, no proposal was selected for funding, and the Corrections Cabinet is considering issuing a revised RFP. In Pennsylvania, construction of the proposed protective custody prisons has been delayed by legislators' concerns about the State's liability for a privately owned and operated facility of this nature. These two examples suggest the range of questioning that states and localities must address in considering enlarging the role of the private sector in corrections management. The NIJ study framed them as political, administrative, legal and financial issues.

Political issues include the spirited debate about whether such correctional management functions as the classification, discipline, and control of inmates, (including, potentially, use of deadly force) can appropriately be delegated to a private contractor; the potential effects of privatization on public policy; the reactions of public employees and corrections managers; and concerns that traditional public reluctance to host a correctional facility in the community may be intersified if that facility is privately operated. There is not yet sufficient experience to yield definitive answers to these questions. Concerns over the delegation of social control can, in the final analysis, be resolved only by carefully defining what limits, if any, are to be placed on contracted functions.

Administrative issues center on quality, accountability and flexibility. Because private providers are under competitive pressure to perform and free of civil service restrictions, many believe that the quality of privately provided services is likely to be superior. Others question whether there will be sufficient market pressure to sustain improvements over the long term. Strong monitoring, onsite inspection, and careful rebidding procedures appear key to ensuring effective performance--and should be carefully designed at the outset. Accountability also requires a clear definition of roles and responsibilities in the contract document and continuing efforts to monitor contract performance. Corrections departments will remain accountable for contracted services and need to adapt supervisory practices to create an effective public-private alliance.

With respect to flexibility, most observers would agree that contracting offers public agencies the ability to respond to immediate needs with greater flexibility and speed than is typically possible under government operation. The experience of the Immigration and Naturalization Service (INS) in contracting for private construction and operation of detention facilities for illegal aliens has demonstrated substantial time savings over standard Agency procedures in bringing new facilities on-line. Some observers are concerned, however that the government would lose some ability to change course over the long term. The issue needs to be considered in planning the types of facilities and contract arrangements best suited to a given jurisdiction.

Legal issues include authority, liability, security and contract specificity. Even where States and counties have statutory authority for service contracting, legislative amendments may be required to permit contracts for primary facility operations, or specific language may be needed to open contracting to profitmaking organizations. Liability also is a critical concern. There is no legal principle to support the premise that public agencies and officials will be able to avoid or diminish their liability merely because services have been delegated to a private vendor. It therefore becomes imperative to ensure that contractors observe appropriate staff selection and training standards. While private sector counsel say that there appear to be no legal barriers to the delegation of security functions, the issue is central to the debate on the appropriate roles and liabilities of the government and its private providers. Some suggest that positions which may call for the use of restraining or deadly force (e.g., perimeter security) be retained by the government. The role of the public agency in internal disciplinary procedures also needs to be considered and specified in both the contract and operating regulations. Adequate staff training and supervision, frequent review and inspection, written client complaint procudures, and periodic inmate surveys have been suggested as useful techniques to ensure the accountability of providers. Perhaps the most important legal issue is the development of explicit contractual standards of performance. Not only the researchers' analysis, but also the experience of our conference participants, and of those federal agencies contracting for detention services, underscore the crucial role of highly specific and detailed contractual standards in ensuring safe, secure, and humane facilities.

The critical financial issue is cost efficiency. Advocates of private management suggest that private vendors can operate equivalent facilities at lower cost, due largely to the staffing efficiency in the absence of civil service regulation, lower private-sector pension and benefits costs, and market incentives to increase productivity. Critics fear that the costs of private management will escalate once vendors become established, and point to the burden of monitoring private providers as a hidden but potentially large cost of management contracting. While experience here is limited, the privately operated facilities utilized by INS appear to represent a modest cost-savings over those operated by the agency. Reported figures for the privately managed penal farm in Tennessee reflect a savings of approximately 10 percent over county operation and could result in a savings of well over $100,000 in the first year of the contract. Conversely, when the National Institute of Corrections sponsored an evaluation of the first large juvenile facility to be privately operated (a training school for 400-500 serious juvenile offenders), the evaluator reported that private operation did not result in significant cost savings. As many observers point out, however, publicly-operated facilities typically do not include the costs of capitol investment, debt maintenance, and other elements of facility cost in calculating and reporting their per diem cost per inmate, and, thus, actual savings, in privately constructed and operated facilities may be greater than they initially appear.

Cost comparisons also are difficult because public and private facilities may serve different populations with different security requirements and service needs (particularly if private facilities deal only with lower risk offenders). Further, costs will differ if private vendors are to be held accountable for running institutions that meet professional standards. At the NIJ conference, for example, private contractors stated that their institutions would adhere to ACA Commission on Accreditation standards, which of course include standards on space and crowding. Public institutions may not be able to adhere to similar standards since they cannot refuse to accept prisoners. Precisely because of their crowding, however, the costs per inmate in public facilities may be artificially lower.

While some observers criticize the use of for-profit vendors, fearing that profit may take precedence over sound correctional practice, both the researchers and NIJ conference participants concluded that selecting a contractor is much like the decision to add additional staff. The agency should evaluate a provider's history of performance, staff competence, and correctional philosophy, rather than its organizational classification.

In summary, while definitive answers are not yet available, the NIJ research suggests that further experimentation with privately managed facilities may be warranted to achieve several goals:

o To avoid permanent facility expansion but still accommodate near-term population shifts.

o To test new practices without making permanent commitments or laboring under bureaucratic constraints.

- To acquire greater geographic and programmatic diversity than is typically possible under a centralized agency.
- To satisfy unique or highly specialized treatment needs that cannot be efficiently handled in a general-purpose institution.
- To develop interjurisdictional facilities unencumbered by the politics of geography.

NIJ Work Underway or Planned

The National Institute of Justice is publishing and will distribute widely, the report, The Privatization of Corrections, which provided the principal basis for this testimony. In addition, as a result of the interest expressed at the National Forum on Corrections and the Private Sector, we are working with state and regional correctional associations to make available conference materials, speakers, and a video presentation, so that they can examine the relevant issues in the context of their own jurisdictional needs and problems.

There also are several other projects underway at NIJ relevant to the role of the private sector in corrections. The Institute will shortly be publishing a detailed analysis of both the impediments and the incentives to increased private sector participation in prison industries. An initiative to build on this effort is under consideration. As noted earlier, the area of prison industries is a critical and potentially promising arena for private sector involvement. Because of the importance we attach to increasing the opportunity for productive work programs within prisons, NIJ grant funds already are supporting preliminary work at the National Center for Innovation in Corrections. The Center was recently established at George Washington University with the mission of increasing prison industry and educational programming—creating the "factories with fences" of which Chief Justice Burger has spoken.

Work on The Privatization of Corrections also highlighted a number of questions which jurisdictions considering alternative financing techniques for prison or jail construction need to address. We have funded a small feasibility study to determine whether the type of financial programs utilized by investment firms, to develop and market alternative financing packages, can be usefully adapted to help jurisdictions determine when such financing would be beneficial and/or select among options offered.

Research is also being conducted by an NIJ Visiting Fellow on detailed local experience with both innovative financing techniques and new building technologies which might be applied for both time and cost savings in prison and jail construction.

The National Institute of Justice also has under review a proposal for working with one or more States considering facility management contracts for mainline adult populations, so that their experience can be documented and shared with other jurisdictions throughout the country.

Facility Management Contracting Activity
in 1984

Federal Contracts	State Corrections Contracts	Local Jail Contracts
Immigration & Naturalization Service. • 4 facility contracts for aliens awaiting deportation were operating (in San Deigo, Los Angeles, Houston, Denver), providing a total capacity of 625 beds. • 3 facility contracts were nearing award (in Las Vegas, Phoenix, San Francisco), providing another 225 beds. • 2 additional facility contracts offering a total of 270 beds were planned in the near term (Laredo and El Paso, Texas). U.S. Marshals Service • 2 small (30-bed) facilities operated under contract in California. • Plans to open a larger (100- to 150-bed) contracted facility in Los Angeles for alien material witnesses. Federal Bureau of Prisons • Plans to operate a 400- to 600-bed contracted facility for sentenced aliens in the Southwest region. (Project delayed due to siting difficulties.) • A 60-bed facility in La Honda, California operated under contract for offenders under the federal Youth Corrections Act.	Secondary Adult Facilities • 28 States reported the use of privately operated prerelease, work-release, or halfway house facilities. Largest private facility networks found in California, Massachusetts, Michigan, New York, Ohio, Texas, and Washington. Primary Adult Facilities • No contracts reported for the confinement of mainstream adult populations; however, the Kentucky Corrections Cabinet issued an RFP in late 1984 to contract for minimum security housing for 200 sentenced felons. • Two interstate facilities for for protective custody prisoners planned by private contractor. Juvenile Facilities • A 1982/83 survey of private juvenile facilities found 1,877 privately operated residential programs holding a total of 31,390 juveniles, 10,712 of whom were held for delinquency. Only 67 institutions were classified as strict security and 428 as medium security. • Departing from the small, less secure settings characteristic of contracted juvenile facilities, a private contractor operates the Okeechobee (FL) Training School for 400 to 500 serious juvenile offenders.	• Legislation enabling private jail operations was pending in Colorado and had passed in New Mexico and and Texas. • While the National Sheriff's Association registered formal opposition to privately operated jail facilities, corporate providers reported significant interest and a number of pending proposals for jail operations in the Southern and Western regions. • In Hamilton County, Tennessee a private contractor took over the the operations of a local work house holding 300 males and females awaiting trial or serving sentences up to 6 years in length. Shared Facilities • One private organization in Texas planning to construct and operate a facility that would serve local detention needs as well as the needs of Federal agencies responsible for confining illegal aliens. • Other proposals have called for the development of regional jail facilities that would serve multi-county detention needs.

[a] Reported in phone contacts made in January/February 1984 with additional follow-up at later points in 1984.

[b] Unpublished tables from Children in Custody: Advance Report on the 1982/83 Census of Private Facilities, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, Washington, D.C.

NONDEPARTMENTAL WITNESSES

STATEMENTS OF:

THOMAS MADDEN, ESQ., VENABLE, BAETJER, HOWARD & CIVILETTI

ALVIN J. BRONSTEIN, EXECUTIVE DIRECTOR, NATIONAL PRISON PROJECT, AMERICAN CIVIL LIBERTIES UNION

PREPARED STATEMENTS

Senator SPECTER. Let us begin with your views, Mr. Madden.

Mr. MADDEN. Thank you. I have a longer statement to insert, but I will briefly summarize it.

Senator SPECTER. Without objection, your statement will be submitted as will be the statement of Mr. Bronstein.

[The statements follow:]

STATEMENT OF THOMAS J. MADDEN

Privatization and Corrections - The Impact On Governmental Liability

Within the last 20 years the courts have established a host of new safeguards to protect the rights of those held in state and local prisons and jails. In a series of decisions the United States Supreme Court has made state and local government officials accountable for protection of these rights. The lawsuits which have led to these decisions have been based on 42 U.S.C §1983 which provides, in part, that every person "acting under color of state law," who deprives an individual of the rights secured by the Constitution, shall be liable to the party injured by such deprevation. Questions have been raised as to whether this new accountability will be undermined if the operation of jails and prisons are undertaken by private parties pursuant to contracts with state and local government.

Privatization in the corrections field encompasses private operation of prisons and jails, and private financing of prisons and jails. Accountability should be of concern only where there is private operation of a prison or jail. From an analytical standpoint, there should be no difference in accountability because the government enters into a contract to build a facility on one hand with funding provided by general obligation bonds or on the other hand with money advanced directly by private lenders.

In my view, there are several reasons why private operation of correctional facilities should not reduce the safeguards for protecting these prisoner rights. Most importantly, the decisions of the Supreme Court, which have led to fundamental improvements in corrections and have increased safeguards for prisoner rights, are based on fundamental Constitutional norms and therefore private operation of prisons and jails is unlikely to diminish the impact of these decisions. In cases such as Burton v. Wilmington Parking Authority, 365 U.S. 706 (1961) and Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), for example, the Supreme Court has held that state and local governments can be held responsible for the actions of private organizations, working with or for with state and local governments, in fields which have "traditionally been the exclusive prerogative of the state."

Privatization has many benefits for corrections. State and local correctional systems across the country are faced with court orders which require that new facilities be built. However, the source of funding for such facilities is extremely limited and private funding of the construction of correctional facilities can be an important source of revenue for state and local governments. One of the other benefits of privatization is that it may shift some of the costs of liability from the government to the private sector. This is likely to be the case in routine negligence actions which seek to recover damages for injuries arising out of improperly maintained facilities or poor sanitary or health conditions. The Supreme Court's holding in Parratt v. Taylor, 451 U.S. 527 (1981) suggests this conclusion. In the Parratt case, the Court held that if there is an alternative remedy to §1983, which will vindicate a prisoner's rights or redress a prisoner's injury, that alternative remedy must be pursued. This may prove to be a benefit both to state and local governments and to prisoners because if private industry is going to operate a facility and make a profit it will have to take steps to minimize exposure to liability. Risk management techniques, which have been developed by the private sector and by insurance companies, can be utilized to minimize liability. At the core of such techniques is the identification of potential sources of liability and the development of policies and procedures to avoid such liability.

Privatization cannot relieve state and local officials of their obligations to assure that prisoners' rights are safeguarded. State and local officials must assure that their contractors are doing a fair and effective job in operating the facilities. If they abdicate this responsibility, I believe that there are ample legal grounds for holding these officials liable for deprivation of prisoner rights. Furthermore, I believe that under the laws in most states and under the decisions of the Federal and state courts, state and local officials will be required to make all decisions which effect a prisoner's liberty interests and to establish basic policies governing care and treatment of prisoners.

Liability is only one of the many legal issues state and local governments will have to consider. Others include limitations on privatization imposed by state laws and the authority of a jurisdiction to engage in negotiated procurements for services or construction.

LEGAL ISSUES IN PRIVATIZATION OF CORE CORRECTIONAL FUNCTIONS

The operation of correctional facilities and programs by the private sector has historical roots going back to the eighteenth century in this country. Only recently have these activities been described by the term "privatization" and have they been the focus of increased attention by correctional officials and state and local policy-makers.

Privatization, as the term is currently used in the corrections field, describes both the operation of correctional facilities and programs and the private financing of correctional facilities for use by state and local governments. The American Civil Liberties Union and others have raised questions about the impact of privatization on the protection of the rights of prisoners. This issue, as discussed below, may have some relevancy to private operation of correctional facilities, but it has no relevancy to private financing of state and local correctional facilities. From an analytical standpoint, the rights of prisoners do not turn on whether a facility is built with funds derived through general obligation bonds or appropriated funds, or with funds raised from private sources through private bonds, limited partnerships or other financing tools typically used in privatization.

Accountability is but one of many issues which must be considered in any privatization effort. The first question which must be addressed is the basic authority of the governmental entity to enter into an agreement with the private sector to build or operate a correctional facility. Each jurisdiction must examine its laws to see if the authority exists and it has been my experience that there is wide variance in the authority of state and local levels to utilize the private sector in the correctional arena.

If the authority exists, the next question that must be dealt with arises out of the procurement laws of state and local governments. In many jurisdictions, there is limited authority to enter into a long-term contract or to use negotiated procurements, and privatization efforts must be structured to comply with those laws. In states which have adopted the American Bar Association's Model Procurement Code for State and Local Governments, these issues will not be a problem.

Liability of government officials for deprevation of prisoners' rights is also a major issue in privatization. One of the most significant trends in law today is the readiness of the court to grant compensation for deprevation by state and local officials of newly-recognized federally based individual rights including prisoners' rights. The trend arises from 42 U.S.C. §1983 (known simply as Section 1983) and from the availability of attorneys' fees for plaintiffs who are successful in Section 1983 actions. Section 1983 provides in part that "every person acting under the color of any statute, ordinance, regulation, custom or usage of any state ... subjects, or causes to be subject any citizen ... to the deprevation of any rights, privileges, or immunity secured by the Constitution and laws shall be liable to the party injured ...".

Section 1983 was relatively unused until 1961. In that year, the Supreme Court case of Monroe v. Pape, 365 U.S. 167 (1961), breathed life in the provision by granting compensation for an unusually brutal and obviously unconstitutional search-seizure and detention. The Court reasoned that remedies for the abuse of state power were contemplated when Congress enacted Section 1983. Monroe set the stage for the later explosion of Section 1983 suits in federal and state courts against state and local government officials for violations of constitutional rights. In Monell v. Department of Social Services, 436 U.S. 658 (1978), the Supreme Court held that cities and counties may be sued directly for damages or for other appropriate relief where the action challenged "implements or executes a policy, statement, ordinance, regulation or decision officially adopted or promulgated by that body's officers." Even more significantly the Court determined that "municipalities may be sued for constitutional deprevations taken pursuant to governmental 'custom', even though such custom has not received formal approval through the bodies of official decision making channels." Under the 11th Amendment to the Constitution, states themselves are immune from suit without their consent. However, individual state officials are subject to suit and prospective injunctive relief can be granted against the actions by such officials. Municipalities themselves are subject to Section 1983 actions and can be held liable under a strict liability basis.

Because Section 1983 liability is limited to actions taken by persons "acting under color of state law", the question has been raised as to whether private operation of correctional facilities and programs will insulate the state from Section 1983 actions and will result in a deprevation of rights to prisoners.

It would not appear that private operation of correctional facilities should in any way diminish a prisoner's rights or reduce a prisoner's ability to recover for injuries suffered as a result of deprevation of constitutionally protected rights. Most importantly, the decisions of the Supreme Court, which have led to fundamental improvements in corrections and have increased safeguards for prisoner rights, are based on fundamental Constitutional norms. The decisions have found that the state has a special obligation to safeguard basic rights of those in its care and custody and private operation of prisons and jails is unlikely to diminish this special obligation. In cases such as Burton v. Wilmington Parking Authority, 365 U.S. 706 (1961) and Jackson v. Metropolitan Edison Co., 419 U.S. 345 (1974), the Supreme Court has held that state and local governments can be held responsible for the actions of private organizations, working with or for with state and local governments, in fields which have "traditionally been the exclusive prerogative of the state."

Privatization cannot relieve state and local officials of their obligations to assure that prisoners' rights are safeguarded. State and local officials must assure that their contractors are doing a fair and effective job in operating the facilities. If they abdicate this responsibility, I believe that there are ample legal grounds for holding these officials liable for deprevation of prisoner rights. Furthermore, I believe that under the laws in most states and under the decisions of the Federal and state courts, state and local officials will be required to make all decisions which effect a prisoner's liberty interests and to establish basic policies governing care and treatment of prisoners.

This issue was squarely addressed by the United States District Court for the Southern District of Texas in Medina v. O'Neill, 589 F.Supp. 1028 (S.D.Tex. 1984). In this case certain aliens who were detained in a private security facility at the direction of the Immigration and Naturalization Service (INS) alleged that the conditions of their detention gave rise to Constitutional and statutory violations. The INS claimed that the aliens were in the custody of the operator of the private facility and that the problems "stemming from the plaintiffs' detention arose from private actions". 589 F.Supp. at 1038. However, the plaintiffs asserted, and the court agreed, that INS had a duty to oversee their detention and the failure to do so constituted state action. The court stated:

"...[D]etention is a power reserved to the government, and is an exclusive prerogative of the state. As the Supreme Court stated,

> [w]hile as a factual matter any person with sufficient physical power may deprive a person of his [life, liberty or] property, only a state or private person whose action "may be fairly treated as that of the State itself," Jackson, 419 U.S. at 351, 95 S.Ct. at 453, may deprive him of "an interest encompassed within the [Fifth or] Fourteenth Amendment's protection," Fuentes v. Shevin, 407 U.S. 67,84,92 S.Ct. 1983, 1996, 32 L.Ed.2d 556(1972).

Flagg Brothers, 436 U.S. at 157, 98 S.Ct. at 1734.
589 F.Supp. at 1038.

While privatization may not reduce a prisoner's Constitutional rights, it may shift some of the costs of liability from the government to the private sector. The Supreme Court's holding in Parratt v. Taylor, 451 U.S. 527 (1981) suggests this conclusion. In the Parratt case, the Court held that if there is an alternative remedy to §1983, which will vindicate a prisoner's rights or redress a prisoner's injury, that alternative remedy must be pursued. Thus in routine negligence actions which seek to recover damages for injuries arising out of improperly maintained facilities or poor sanitary or health conditions, a court may find that a prisoner should rely on state tort remedies to recover damages. If a state or local government requires a private operator to maintain general liability insurance, that insurance can provide compensation for an injured prisoner.

If liability costs are shifted to the private operator, this may prove to be a benefit both to state and local governments and to prisoners. If private industry is going to operate a facility and make a profit it will have to take steps to minimize its exposure to liability. Risk management techniques, which have been developed by the private sector and by insurance companies, can be utilized to minimize liability. At the core of such techniques is the identification of potential sources of liability and the development of policies and procedures to avoid such liability. In the prison or jail setting, there are numerous decisions of the courts which point to potential sources of liability. The American Correctional Association (ACA) standards are based on part on these decisions and as part of "risk avoidance" efforts, a private operator would likely consider adoption of these standards. This approach was taken by the State of Kentucky in a request for proposals (RFP) issued in October, 1984 which sought proposals for "the complete provision and operation of a 200 male inmate community residential correctional facility for the incarceration of minimum security felons." The RFP required potential contractors to agree to follow ACA standards.

In conclusion, there is not a significant new liability problem arising out of privatization. The courts will continue to protect fundamental rights of prisoners. Furthermore, privatization has many benefits for corrections. State and local correctional systems across the country are faced with court orders which require that new facilities be built or old facility renovation. However, the public funding for such construction is extremely limited and private funding of the construction of correctional facilities can be an important source of revenue for state and local governments.

STATEMENT OF ALVIN J. BRONSTEIN

I am pleased to appear before the Subcommittee, at the invitation of the Chairman, to comment on the possibility of a private prison in the District of Columbia. I am appearing in my capacity as Executive Director of the National Prison Project of the American Civil Liberties Union Foundation.

The National Prison Project since 1972 has sought to strengthen and protect the civil and constitutional rights of adult and juvenile prisoners, to improve conditions in the nation's prisons and jails, and to develop rational, less costly and more humane alternatives to traditional incarceration. We have also engaged in efforts to devise model prison procedures and regulations.

In furtherance of the activities described above, the Project's staff attorneys and other staff members are engaged in the representation of prisoners incarcerated in penal institutions throughout the country. The Project has been and is presently involved in many important cases concerning the rights of prisoners in 22 states as well as the District of Columbia. In addition, the Project's staff has been consulted by correctional officials and legislative committees in various states. I personally have been a consultant to the National Institute of Corrections of the Department of Justice, various state Departments of Corrections, and to the American Bar Association's Joint Committee on the Legal Status of Prisoners as well as others.

The private prison movement, at least for adult prisoners, is a fairly recent phenomenon. At the present time, there is no private adult medium or maximum security prison being operated in the country. Because the issues and problems in the privatization movement are just now being examined and because of other time pressures, I am submitting a very short statement to which is appended a series of articles and papers which raise and to some extent address these questions. I believe these documents will convince the Subcommittee to move very slowly in this area.

The Steering Committee (Advisory Board) of the National Prison Project has been designated as an ad hoc committee of the ACLU Board to recommend policy on the private prison issue. Although no final policy has been adopted or recommended, I believe our final recommended policy will be substantially as follows:

The delegation of control and custody of prisoners to private entities in and of itself raises serious constitutional concerns. Because we believe that the government must remain accountable for the treatment of prisoners, such a delegation would be violative of civil liberties unless all the following guarantees are met:

1. No prisoner shall suffer any deprivation because of placement in a private prison.

2. The profit factor shall not have an adverse impact on any aspect of a prisoner's life or on the factors that affect the duration of his/her confinement.

3. The profit motive shall not result in inappropriate confinement or an inappropriate increase in the use of incarceration as a sanction. (See ACLU policy #239).

4. Prisoners shall retain all of the same substantive and procedural legal rights and remedies.

5. The state shall insure that a private prison complies with all relevant health and safety standards.

6. The state shall retain ultimate legal responsibility for the treatment of prisoners.

STATEMENT OF THOMAS MADDEN

Mr. MADDEN. In a series of decisions the U.S. Supreme Court has made State and local government officials accountable for protection of these prisoners' rights. The lawsuits which have led to these decisions have been based on 42 U.S.C. section 1983 which provides, in part, that every person acting under color of State law who deprives parties of the rights secured by the Constitution shall be liable to parties injured by such deprivation of rights. Questions have been raised as to whether this new accountability will be undermined by privatization efforts in corrections.

Privatization in the corrections field encompasses both private operation of prisons and jails and private financing of prisons and jails.

Most importantly, the decisions of the Supreme Court, which have led to fundamental improvements in corrections and have increased safeguards for prisoners' rights are based on fundamental constitutional norms. The decision has found that the State has a special obligation to safeguard the basic rights of those in its care and custody, and, therefore, private operation of prisons and jails is unlikely to diminish this special obligation. In cases such as *Burton* v. *Wilmington Parking Authority*, 365 U.S. 706 (1961) and *Jackson* v. *Metropolitan Edison Co.*, 419 U.S. 345 (1974), the Supreme Court has held that State and local governments can be held responsible for the actions of private organizations, working with or for State and local governments, in fields which have traditionally been the exclusive prerogative of the State.

Furthermore, I believe that under the laws in most States and under the decisions of the Federal and State courts, State and local officials will be required to make all decisions which affect a prisoner's liberty interests and to establish basic policies governing care and treatment of prisoners.

This issue was squarely addressed by the U.S. District Court for the Southern District of Texas in *Medina* v. *O'Neill*, 589 F. Supp. 1028 (S.D. Texas 1984). In this case certain aliens who were detained in a private security facility at the direction of the Immigration and Naturalization Service alleged that the conditions of their detention gave rise to constitutional and statutory violations. The INS claimed that the aliens were in the custody of the operator of the private facility and that the problems stemming from the plaintiffs' detention arose from private actions. However, the plaintiffs asserted, and the court agreed, that the INS had a duty to oversee their detention and the failure to do so constituted State action.

While privatization may not reduce a prisoner's constitutional rights, it may shift some of the costs of the liability from the government to the private sector.

If liability costs are shifted to the private operator, this may prove to be a benefit both to State and local governments and to prisoners.

STATEMENT OF ALVIN J. BRONSTEIN

Mr. **BRONSTEIN**. Before I get to privatization, the record casts an unfair light on Judge Lasker. After years of directing the city to comply with court orders and having failed to do so, they passed the buck to him plus the political problems. Of the 631 people released, not a lot of serious crimes were involved.

Senator **SPECTER**. Mr. Bronstein, I think you are correct about the crimes committed. According to the information provided to me, there is no criticism intended to Judge Lasker. He faced overcrowding Riker's Island. The question is what do you do? It gives a judge like Judge Lasker, who is a fine judge by all standards, a very difficult choice.

Mr. **BRONSTEIN**. The thrust of all your remarks is more prison space. There has to be a more judicial use of space in that city, and here there are thousands of people who do not need to be incarcerated. We are using a scarce resource unwisely. The privatization movement would fall on that. The rate of prison population is going down. Now projections are that prison population is going down. We need to tighten our belts and wait for that time and not build a lot of jail space.

On the issue of privatization and quasi-judicial decisions, Mr. Fenton said he would go to the government agency involved and consult. If he has prisoners in eight States and has to consult with them each time he has to discipline a prisoner, the cost would eliminate the profit. You have the question of whether entrepreneurs will comply with health standards, whether private entrepreneurs will inherit the immunity that goes to State governmental agencies. Those answers are unclear. They argue for moving very, very slowly in this area.

Finally, as to the policy questions, we believe the government does not have the power to delegate the authority of such a traditional and governmental function merely because the government would no longer be involved in directly operating the institution.

Is it appropriate to operate an institution which provides no incentive? If we have to look for ways to avoid overcrowding, we may say it may be in the interest of an entrepreneur to keep a heavy prison population.

I see the red light is on. I will stop at this point.

Senator **SPECTER**. You think you should go slowly on the evaluation?

Mr. **BRONSTEIN**. No; quickly on the evaluation, but slowly on getting into the business.

Senator **SPECTER**. Your conclusion is that it is a bad idea?

PITFALLS OF OVERALL MANAGEMENT

Mr. **BRONSTEIN**. My general feeling is that it is an idea that is filled with so many pitfalls that we ought to move slowly. Private involvement in prison industry has worked very well in some, but not all cases. Private involvement in the provision of medical services has worked well in New York City and Alabama.

Provision of food services has sometimes worked well, but when you take over the entire institution and everything that goes along with it, the problems there are very serious. We have to look at areas where we have always had private ventures: halfway houses, juveniles, mental health facilities. Let us evaluate those and see if we have real problems in running adult prisoners or not.

Senator SPECTER. There are so many quasi-judicial functions that it cannot be totally in private hands. It may be that overall management would be possible if people were there who had governmental responsibilities to carry on certain functions.

Mr. BRONSTEIN. That is not what happens. Look at the INS. There is a new facility in Houston built by Mr. Hutto's corporation. I have great respect for him. We visited their institution. Nobody was making classification systems. INS said we do not know anything about these people. We are not capable of making classification decisions. The corporation did not feel it had to do it. It was fairly new. The place was only open a few months.

Senator SPECTER. To have somebody make classifications does not require any judicial discretion.

Mr. BRONSTEIN. It involves skill and discretion. The question is who is going to do it? You will find there will be lots of gaps between the State or governmental agency which thinks the other party is doing it. The private agency thinks somebody else is doing it.

Senator SPECTER. I did not mean that it was not difficult. It does not require the discretion that adjudicatory functions do. It is more ministerial.

Mr. BRONSTEIN. Discretionary decisions are made that affect a prisoner's life. Will they be in maximum security or minor protective custody?

Senator SPECTER. You and I might disagree on what is ministerial and what is discretionary. It probably ought to have the broadest classification. You do not err on the side of having private companies perform what are legitimate government functions. If you can do that, you can see your way clear to allow a private firm to run prisons.

Mr. BRONSTEIN. Pursuing that one step further, the American Correctional Association thinks that maybe the private entrepreneur wants to see the prisoners stay. It may be cheaper to keep people in custody. They will do it that way.

Senator SPECTER. That is why you might want to see government officials do classification to try to remove the profit motive from the function which requires discretion.

Mr. BRONSTEIN. Fine, in every area I would like to see the government agency involved.

Senator SPECTER. There may be some latitude for some privatization.

Mr. BRONSTEIN. I think that is possible.

NEED TO KEEP GOVERNMENT INVOLVED

Senator SPECTER. Mr. Madden, with respect to the analysis that you gave, do you have any objection to privatization so long as the responsibilities for those who run the private prisons are the same as those for government officials?

Mr. MADDEN. I would not have any objection to that. I would echo the points that Mr. Bronstein is making. When you are dealing with discretionary decisions, you need governmental people involved. For privatization, when you have liberties and freedoms affected, you need to know how the private sector exercises any discretion. It is exercising a substantial amount of discretion. You need to have government officials involved in making those decisions.

You asked about laws in this area. I call to the committee's attention a law passed by the State of New Mexico—I cannot provide a copy to you—which gets to the delegation of authority. In this particular law New Mexico attempted to provide for, did provide for having independent contractors running the jail. The law says, "If a private contractor runs a jail, any disciplinary violation or any removal for good behavior must be made by the sheriff in the county in which the jail is located."

So the legislation is sensitive to the issue you are raising.

Senator SPECTER. That might be the answer to having a mixture with governmental responsibility attaching those areas.

Mr. BRONSTEIN. We are all concerned about government accountability and you cannot have it unless you have governmental authority. The government must remain in a position of authority, in a position of legal responsibility, so that all of the rest of our society can be convinced of accountability.

CLOSING COMMENTS

Senator SPECTER. It may be the civil rights issues that can be accommodated.

We very much appreciate your being here, gentlemen. It is a hearing that has been very worthwhile. I do not think we should decide today the differences of opinions we have about the prison system. We should not have people in jails if there is a less restrictive way, but I disagree with you very strongly as to what the future holds. The crime rate is bound with the increases noted year after year after year, but there is a wave of mandatory sentencing around the States. A new Federal statute provided for tougher sentencing for career criminals found guilty of possession of a gun, and we approach that issue from different vantage points.

My own strong sense is that we are going to need jails. There are a lot of violent criminals who need to be confined. In the Federal system, the incarceration rate has gone up materially. They are 10 or 15 percent overcrowded. The same thing applies to the States.

Mr. BRONSTEIN. The States that passed the harsh sentencing laws have reevaluated because they could not build their way out. They are looking toward reducing that. To deal with bad policy that was passed last year, by adding something on to it for prisoners, is not responsible. The way to do it is to eliminate that policy. I do not think the mandatory minimum sentences are bad policies.

Senator SPECTER. Have any eliminated it?

Mr. BRONSTEIN. Yes; some by revision of the lesser sentence, some by emergency overcrowding, and there are studies to redo the harsh sentencing they passed 10 years ago.

SUBCOMMITTEE RECESS

Senator SPECTER. Thank you very much. The subcommittee will stand in recess.

[Whereupon, at 1:20 p.m., Tuesday, May 14, the subcommittee was recessed, to reconvene at 11:30 a.m., Thursday, June 6.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

THURSDAY, JUNE 6, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 11:30 a.m. in room SD–138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Lautenberg.

DISTRICT OF COLUMBIA

PRISON SYSTEM

STATEMENT OF THOMAS M. DOWNS, CITY ADMINISTRATOR/DEPUTY MAYOR FOR OPERATIONS

ACCOMPANIED BY:

JAMES PALMER, DIRECTOR, DEPARTMENT OF CORRECTIONS

RODNEY J. AHITOW, CONSULTANT TO DEPARTMENT OF CORRECTIONS FOR EDUCATION AND VOCATION PROGRAMS

RICHARD BEN-VENISTE, CHAIRMAN, ADVISORY COMMITTEE ON EDUCATION AND REFORM

OPENING STATEMENT

Senator SPECTER. Good morning, ladies and gentlemen. We will convene this hearing of the District of Columbia Subcommittee of the Appropriations Committee. The subject of our hearing today is the status of prison reform in the District of Columbia.

This is one of a continuing series of hearings to evaluate the progress which is being made in the District of Columbia prisons on appropriations for rehabilitation and job training of the inmates there. It follows the appropriations made by Congress on the initiative of this subcommittee, which is directed to the fundamental proposition, when it is no surprise that functional illiterates with no trade or skill return to a life of crime when released from jail, and the effort has been made in the District of Columbia prisons to set a model standard which might be duplicated on a nationwide basis.

It is my sense that there is much to be done in terms of education, vocational training, and rehabilitation for juveniles, first offenders, and second offenders. Then in the context of having given people a chance in that milieu, if they become career criminals, to move ahead with mandatory sentences of 15 years to life, as embodied in career criminal legislation which the Congress enacted last year.

Those two programs, in my judgment, have to go hand in hand. There has to be a realistic effort at rehabilitation and job training if we are to be tough on people who go astray beyond that point, and there have been substantial appropriations for the District of Columbia prison, and we are watching it very closely.

The Mayor has been very supportive. There has been continuing contact between my staff and the Mayor's staff. There has been continuing contact between the Mayor and me personally on these matters. We talk with some frequency. I am very grateful to Richard Ben-Veniste's inquiry for work which he has done in coordinating objectives which have been set by this subcommittee in working with the Mayor's group; and also with the Corrections Education Advisory Committee. Their council assistance has been really tremendous.

At this time I would yield to the distinguished ranking member of this subcommittee, Senator Lautenberg.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman. I am here just to gain some insight into the problem of the prison population, and how we deal with it here in the District. As you know, this committee is a relatively new experience for me. I am pleased in the leadership role you have been taking.

I have looked at the correspondence between you and the Mayor, and some of the reports that have developed as a result of your interest, and I am pleased to be here this morning to get a little more insight into the problem.

INTRODUCTION OF WITNESSES

Senator SPECTER. Thank you very much, Senator Lautenberg.

I would like to call at this time Mr. Thomas Downs, Deputy Mayor for Operations and City Administrator, accompanied by James Palmer, Director, Department of Corrections.

I would like to have you step forward at this time Mr. Rodney Ahitow, consultant with the Department of Corrections, and I would ask Mr. Ben-Veniste to join the group at this time, if he would, please.

Mr. Downs, welcome, and thank you for joining us. You may proceed to give us an update.

PREPARED STATEMENT

Mr. DOWNS. Senator, it is my pleasure to be here this morning. I will simply enter my appearance statement for the record, and do a quick summary, and yield to Mr. Ahitow.

Senator SPECTER. Without objection, your statement will be made a part of the record, and you know how we function. If you proceed on this basis, Mr. Downs, we would appreciate it.

[The statement follows:]

Statement of Thomas M. Downs

GOOD MORNING SENATOR SPECTER, AND DISTINGUISHED MEMBERS OF THE COMMITTEE.

IT IS WITH A GREAT DEAL OF PLEASURE THAT I APPEAR BEFORE YOU TODAY, ON BEHALF OF THE MAYOR, TO TALK ABOUT THE STATUS OF THE DISTRICT'S CORRECTIONS EDUCATIONAL AND VOCATIONAL PROGRAM. IN ADDITION, I WILL SHARE THE STATUS OF OUR EFFORTS RELATED TO PLANNING FOR CONSTRUCTION OF A CORRECTIONAL FACILITY IN THE DISTRICT.

IN THE FIRST INSTANCE, I WANT TO EXPRESS THE CITY'S GRATITUDE FOR THE INSIGHTFUL, UNSWERVING LEADERSHIP WHICH YOU HAVE BROUGHT TO THE COMMITTEE. WITHOUT YOUR ASSISTANCE, WE WOULD NOT BE IN A POSITION TODAY OF REPORTING TO YOU THE REAL PROGRESS WHICH HAS BEEN MADE TOWARD UPGRADING THE QUALITY OF EDUCATIONAL AND VOCATIONAL SERVICES TO INMATES OF OUR DEPARTMENT OF CORRECTIONS. OUR OVERRIDING OBJECTIVE, ONE WHICH YOU SHARE, IS TO SERVE AS A MORE EFFECTIVE "CHANGE AGENT" AND TO OBIVIATE THE NEED FOR FURTHER CRIMINAL INVOLVMENT BY EQUIPPING THE INMATES WITH MARKETABLE JOB SKILLS.

OURS HAS BEEN AN UPHILL STRUGGLE; ONE WHICH IS FAR FROM OVER. THE PROBLEM WHICH HAS BEEN ENCOUNTERED SINCE THE INITIATION OF OUR EFFORTS IS THAT, IN THE DISTRICT AND ELSEWHERE, THE STATUS AND PRIORITY ESTABLISHED FOR CORRECTIONAL INMATE EDUCATION AND TRAINING HAS NOT BEEN COMMENSURATE WITH NEED. THE ROLE, QUALITY AND RELEVANCE OF PROGRAMS IN OUR INSTITUTIONS HAVE NOT KEPT PACE WITH THE SOCIAL, ECONOMIC, POLITICAL, AND TECHNOLOGICAL CHANGES AND EXPECTATIONS OF SOCIETY. OFFENDERS TYPICALLY LACK MARKETABLE EDUCATION NECESSARY TO DEVELOP THESE SKILLS. THEY HAVE BEEN "LOSERS" IN SCHOOL AND ARE CAUGHT UP IN A CYCLE OF CULTURAL AND ECONOMIC DEPRIVATION. AGAINST THIS BACKDROP, WE

SEEK TO INTERVENE IN THEIR LIVES, OFFER TRAINING, OFFER SKILLS, OFFER HOPE, AND OFFER MEANINGFUL OPTIONS.

IT IS OUR AIM THAT THIS PROGRAM MUST PROVIDE PARTICIPANTS WITH:

(1) AN APPROPRIATE CURRICULUM FOR ACADEMIC AND PRE-VOCATIONAL SKILL DEVELOPMENT;

(2) APPROPRIATE EXPERIENCES FOR PERSONAL DEVELOPMENT;

(3) REQUISITE SKILLS TO FIND AND MAINTAIN EMPLOYMENT; AND

(4) LINKAGES WITH PUBLIC AND PRIVATE SECTOR EMPLOYERS, COMMUNITY-BASED ORGANIZATIONS, AND OTHER SUPPORT AGENTS TO FACILITATE COMMUNITY RE-INTEGRATION UPON RELEASE.

THANKS, IN LARGE MEASURE, TO THE ENERGIES AND COOPERATIVE SPIRIT OF MR. RICHARD BEN-VENISTE AND THE MEMBERS OF OUR ADVISORY COMMITTEE AND THE DEDICATED EFFORTS OF OUR FINE STAFF, WE ARE WELL ON OUR WAY TO REALIZING THESE AIMS.

THE MAYOR CONVENED SEVERAL MEETINGS AT WHICH THE PROGRAM'S MANAGEMENT ASSUMPTIONS AND MODEL WERE DISCUSSED. AT THESE SESSIONS VERY CANDID INTERCHANGES TOOK PLACE RELATIVE TO ROLES, RESPONSIBILITIES, AND AUTHORITY. AN OUTGROWTH OF THESE MEETINGS IS THAT THERE IS UNDERSTANDING AND ACCEPTANCE THAT THIS PROGRAM IS AN INTEGRAL ONE, AND MUST BE INTEGRATED INTO THE MAINSTREAM OF INSTITUTIONAL OPERATIONS. EDUCATIONAL POLICIES ARE SET BY THE EDUCATIONAL SERVICES STAFF; DAY-TO-DAY OPERATIONS TAKE PLACE UNDER THE COGNIZANCE OF THE INSTITUTIONAL ADMINISTRATORS (WARDENS). ALL POLICY CHANGES OR POLICY SHIFTS WHICH MAY AFFECT THE EDUCATIONAL PROGRAM SHALL BE INITIATED ONLY AFTER COLLABORATION BETWEEN DETENTION OR CORRECTIONS SERVICES, AND EDUCATIONAL SERVICES POLICYMAKERS. AN IMMEDIATE PRODUCT GROWING FROM THESE DISCUSSIONS IS THAT INMATE PARTICIPATION IN THESE PROGRAMS SHALL NO LONGER BE VOLUNTARY. FAILURE TO PUT FORTH EFFORT VIS-A-VIS THESE PROGRAMS WILL RESULT IN SANCTIONS INCLUDING THE PROSPECT OF A NEGATIVE PAROLE RECOMMENDATION.

A PROGRAM MANAGEMENT COMMITTEE COMPRISED OF REPRESENTATIVES OF EDUCATIONAL SERVICES, DETENTION SERVICES, CORRECTIONAL SERVICES, THE DEPARTMENT OF EMPLOYMENT SERVICES, THE PAROLE BOARD, AND THE OFFICE OF THE MAYOR HAS BEEN ESTABLISHED AND WILL MEET REGULARLY TO REVIEW PROGRAM ACCOMPLISHMENTS, DEFICIENCIES, OPPORTUNITIES, AND THE LIKE. THIS WILL HELP US MAINTAIN MOMENTUM AND WILL FURTHER ENGENDER A SENSE OF "OWNERSHIP" AMONG THOSE WHO ARE VITAL TO ITS SUCCESS.

PRIOR TO SHARING SOME OF THE INDICATORS OF PROGRESS AND SUCCESS, I WISH TO POINT OUT A DISAPPOINTMENT -- WE ARE NOT AS FAR DOWN THE ROAD IN THE AREA OF VOCATIONAL EDUCATION AS WE WOULD WANT TO BE. IT IS A DIFFICULT PROPOSITION TO EXPEDITIOUSLY DESIGN AND IMPLEMENT NECESSARY INSTRUCTIONAL PROGRAMS, MAKE APPROPRIATE OVERTURES TO LABOR ORGANIZATIONS, AND CLOSE THE OPERATIONAL LOOP TO THE POINT WHERE SIGNIFICANT PLACEMENT OPPORTUNITIES EXIST. OUR EXPERIENCES HAVE TAUGHT US THAT WE MUST INCREASE OUR USE OF TURN-KEY PROGRAMS AND MUST MORE IMAGINATIVELY AND FULLY UTILIZE THE JOB DEVELOPMENT/PLACEMENT MECHANISMS WHICH EXIST THROUGH OUR DEPARTMENT OF EMPLOYMENT SERVICES AND COMMUNITY-BASED ORGANIZATIONS.

A PROGRESS REPORT HAS BEEN SENT UNDER SEPARATE COVER. HOWEVER, I DO WISH TO POINT OUT SEVERAL PROGRAM ACCOMPLISHMENTS IN THE CONTEXT OF THIS STATEMENT:

* SINCE DECEMBER, DAILY CLASSROOM ATTENDANCE HAS INCREASED FROM 780 TO 1,499 (92 PERCENT).

* SINCE DECEMBER, 1984 THE PERCENTAGE OF INMATES PASSING THEIR HIGH SCHOOL EQUIVALENCY EXAMINATION HAS INCREASED FROM INCREASED 57 PERCENT TO 73 PERCENT.

* JOB PLACEMENTS HAVE INCREASED BY 46 PERCENT SINCE

FEBRUARY. UP TO 10 GRANTS WILL BE AWARDED TO COMMUNITY ORGANIZATIONS BY JULY 9 TO FACILITATE JOB PLACEMENTS OF STUDENT INMATES.

- THE COMPUTER-AIDED INSTRUCTION PROGRAM IS BEING IMPLEMENTED ON A PHASED BASIS. HARDWARE AND SOFTWARE HAVE BEEN ACQUIRED. RESULTS HAVE ALREADY BEEN SEEN AT OCCOQUAN WHERE THE USE OF THIS TECHNOLOGY HAS BOOSTED THE PERCENTAGE OF PERSONS PASSING THEIR HIGH SCHOOL EQUIVALENCY EXAMINATIONS FROM 10 PERCENT TO 90 PERCENT.

- OUR STUDENT INFORMATION SYSTEM HAS BEEN AUTOMATED AND WE HAVE INTRODUCED COMPUTER REPAIR TRAINING AT THREE INSTITUTIONS.

- OUR INSTRUCTIONAL STAFF COMPLEMENT HAS GROWN FROM 48 BEFORE THE PROGRAM TO 210 TODAY.

OVER THE NEXT SEVERAL MONTHS WE WILL FOCUS INCREASED ATTENTION ON JOB PREPARATION AND PLACEMENT, COMPUTER-AIDED INSTRUCTION AND INCREASED USE OF TURN-KEY PROGRAMS.

THE LORTON YOUTH CENTER 1, WHICH IS SCHEDULED TO BE REOPENED LATER THIS MONTH, WILL SERVE AS A "MODEL WITHIN A MODEL" IN THAT INNOVATIVE CURRICULUM OFFERINGS, INSTRUCTIONAL METHODS, COMPUTER-AIDED INSTRUCTION AND THE LIKE, WILL BE IMPLEMENTED AND EVALUATED THERE. THOSE EFFORTS WHICH DEMONSTRATE EFFECTIVENESS AND UTILITY WILL BE REPLICATED AND SYSTEMATICALLY TRANSFERRED TO THE OTHER INSTITUTIONS.

WE FEEL STRONGLY THAT THE DELIVERY OF ACADEMIC AND VOCATIONAL EDUCATION SERVICES TO OFFENDERS MUST ALSO BE FOCUSED AT THE JUVENILE LEVEL. HOPEFULLY, THIS WILL REDUCE THE NUMBERS WHO "GRADUATE," TO THE ADULT SYSTEM. THEREFORE, WE ARE DESIGNING AN

IMPROVED SYSTEM OF EDUCATIONAL AND VOCATIONAL TRAINING AT THE OAK HILL YOUTH CENTER WHICH IS OPERATED BY THE DEPARTMENT OF HUMAN SERVICES. THIS PROGRAM WILL UTILIZE THE LESSONS LEARNED BY THE DEPARTMENT OF CORRECTIONS, AND WILL INVOLVE COMPUTER-AIDED INSTRUCTION, INNOVATIVE VOCATIONAL EDUCATION, AND GENERAL ACADEMIC INSTRUCTION.

FISCAL REPORT

THROUGH APRIL, THE DISTRICT HAD COMMITTED $7.9M TO ITS EDUCATION INITIATIVE. WE EXPECT TO EXPEND $11.6M BY YEAR END. THUS, AN ADDITIONAL $5.4M IS NEEDED TO SUPPORT THE CURRENT OPERATING PROGRAM, SINCE PART-YEAR FUNDING OF $6.2M WAS AWARDED AT THE START OF THE YEAR.

THE CAPITAL BUDGET FOR THIS PROGRAM WAS ORIGINALLY FUNDED AT $9.9M. BASED ON ACTUAL BIDS, WE NOW FIND THAT THE PROGRAM WILL COST AN ADDITIONAL $3.8M TO PROVIDE EXPANDED CAPACITIES IN ALL EIGHT (8) INSTITUTIONS AT LORTON. THE FOUNDATIONS FOR ALL THESE FACILITIES ARE NOW IN THE GROUND, AND CONTRACTS ARE BEING AWARDED UP TO THE LIMITS OF FUNDING FOR THE BALANCE OF THE CONSTRUCTION.

CORRECTIONS FACILITY CONSTRUCTION

I WISH TO BRIEFLY INFORM YOU ABOUT OUR PROGRESS RELATIVE TO THE ISSUE OF CONSTRUCTION OF A CORRECTIONAL FACILITY IN THE DISTRICT. I WILL NEITHER REHASH THE HISTORY CONCERNING THIS MATTER NOR REFLECT ON THE DRIVING FORCES WHICH HAVE CREATED OUR UNTENABLE PRISON OVERCROWDING. RATHER, I WILL BRIEFLY SHARE ACTIVITIES, BOTH ACTUAL AND PROSPECTIVE, AND A GENERAL TIMETABLE FOR TASK ACCOMPLISHMENT:

THE MAYOR SIGNED AN ORDER ESTABLISHING A DISTRICT OF COLUMBIA ADVISORY CORRECTIONAL FACILITY STUDY COMMISSION. I HAVE BROUGHT A COPY OF THE ORDER FOR YOUR INFORMATION. THE COMMISSION WILL BE

APPOINTED BY THE MAYOR AND THE COUNCIL DURING JUNE. IT WILL REPORT TO THE MAYOR AND THE COUNCIL, AND WILL:

- RECOMMEND THE PRISON POPULATION, BY SIZE AND SECURITY DESIGNATION, TO BE HOUSED IN THE FACILITY;
- RECOMMEND INSTITUTIONAL PROGRAMS;
- RECOMMEND THE TYPE, SIZE AND GENERAL STRUCTURAL DESIGN;
- EXAMINE ALTERNATIVE SITES FOR CONSTRUCTION; AND,
- DEVELOP OPTIONS RELATIVE TO HANDLING OPERATING COSTS.

IN ADVANCE OF THE ESTABLISHMENT OF THE COMMISSION, WHICH WILL ISSUE ITS RECOMMENDATIONS BY THE END OF OCTOBER, A NUMBER OF ACTIVITIES HAVE BEEN ON-GOING AT THE STAFF LEVEL.

THE DEPARTMENT OF CORRECTIONS HAS DEVELOPED AN ANALYSIS OF THE DISTRICT'S PRISON POPULATION TRENDS OVER THE PAST 10 YEARS. THIS ANALYSIS WILL FORM THE BASIS FOR POPULATION PROJECTIONS.

TECHNICAL ASSISTANCE HAS BEEN OBTAINED THROUGH THE NATIONAL INSTITUTE OF CORRECTIONS (NIC) TO ASSESS THE EFFICACY OF THE DISTRICT'S METHODOLOGY TO BE USED TO PROJECT POPULATION. PRELIMINARY DISCUSSIONS WITH THE CONSULTANTS REVEAL DEFICIENCIES INHERENT IN THE METHODOLOGY THE DISTRICT HAS EMPLOYED. SPECIFICALLY, THE USE OF HISTORIC TREND ANALYSIS MAY NOT PERMIT ACCURATE CALCULATION OF THE IMPACTS OF RECENTLY-ENACTED OR FUTURE POLICY SHIFTS. UPON RECEIPT OF FORMAL REPORTS FROM THE NIC CONSULTANTS WE WILL FURTHER ASSESS THE USEABILITY OF THESE DATA. THEIR IMPORTANCE, OBVIOUSLY, IS THAT THEY FORM THE BASIS FOR CONSEQUENTIAL DECISIONS WHICH MUST BE MADE RELATIVE TO INSTITUTIONAL SIZE, SECURITY DESIGNATION, AND THE LIKE.

THE DEPARTMENT OF CORRECTIONS HAS ESTABLISHED IN-HOUSE TASK FORCES ON SUCH SUBJECTS AS SECURITY AND PROGRAMS TO BEGIN MAKING

SOME PRELIMINARY ASSESSMENTS IN ADVANCE OF DISCUSSIONS WITH THE COMMISSION.

MY SPECIAL ASSISTANT FOR CRIMINAL JUSTICE, HAL WILLIAMS, JUST RETURNED FROM A VERY PRODUCTIVE FACT-FINDING TRIP TO PHILADELPHIA AND NEW YORK CITY WHERE, ALONG WITH REPRESENTATIVES OF NIC, HE TOURED VARIOUS FACILITIES AND HAD DISCUSSIONS WITH TOP CORRECTIONAL DECISIONMAKERS. IN PHILADELPHIA HE VISITED HOLMESBURG, THE DETENTION CENTER, HOUSE OF CORRECTIONS, THE NEW MEDIUM-MAXIMUM SECURITY FACILITY WHICH IS PRESENTLY BEING CONSTRUCTED, AND HE VISITED THE SITE FOR THE NEW CENTER CITY DETENTION FACILITY. HIS DISCUSSIONS WITH SUPERINTENDENT DAVID OWENS ABOUT PHILADELPHIA'S PLANNING PROCESS WERE VERY USEFUL AND INFORMATIVE. IN NEW YORK CITY TWO FEDERAL FACILITIES WERE VISITED, AS WERE RIKERS ISLAND AND THE TOMBS.

FOR THE NEXT SEVERAL MONTHS THE COMMISSION WILL BE DISCHARGING ITS MANDATE. AS PRODUCTS ARE DEVELOPED THEY WILL BE SHARED WITH YOU, SENATOR SPECTER. IN ADDITION, THERE WILL BE PUBLIC DISCUSSION OF THE COMMISSION'S RECOMMENDATIONS.

WE ARE PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVE RELATIVE TO THESE MATTERS WHICH ARE BEFORE THE COMMITTEE.

THANK YOU.

OPENING STATEMENT OF CITY ADMINISTRATOR, THOMAS DOWNS

Mr. DOWNS. First of all, Senator, while we have had a number of difficulties over this first year attempting to implement your initiative, we recognize now that without your insistence, without your enthusiasm, and in many cases, your demanding support for this program, we would not be where we are today in the District.

Large-scale institutions like State prison systems are hard to change. Sometimes it takes a special initiative to create an innovative program which attempts to solve the complex problem in the corrections system.

Senator SPECTER. Let me interrupt you there. I appreciate your comments. I think the subcommittee has been demanding. The subcommittee feels very much on the spot in terms of how much money we put up, and the most recent reports, I think, have been very good ones, and we will get into those; but I think it is going to take a lot of push and a lot of pressure, and the subcommittee intends to stay with it, and I know the Mayor does, too.

Mr. DOWNS. Without those demands, we would not be nearly as successful as we are now.

An equally demanding advisor, Richard Ben-Veniste and his committee have spent tireless efforts and an untold amount of hours providing day-to-day direction, guidance, and support. They have been a key element in the success of the program to date.

We have learned several things in this process. I think they are applicable, naturally, and I would like to highlight some of those.

It is hard to change the thrust of a correction system in a relatively short period of time. Since a major emphasis in the correction system is security, the main mission of a correction system is often perceived as simply to contain potentially violent individuals in order to safeguard society.

To put, in the mainstream of a corrections system, education programs which treat the inmates in a way to prevent recidivism is a difficult task. We have found that it has been necessary to decentralize the educational program in the various institutional sites to undertake rapid corrective steps to integrate the education programs into the daily operation of the facilities, and to make the education program one that is owned jointly by the facility administrator and the educational program directors.

Senator SPECTER. How are we doing on that?

COORDINATION BETWEEN FACILITY DIRECTORS AND EDUCATION PROGRAM SPECIALISTS

Mr. DOWNS. The Mayor has been insistent, and has been meeting regularly with the facilities directors and the education program specialists to emphasize the need for cooperative and coordinated efforts. By decentralizing the control of the inmates around the education program, facility administrators understand and accept that the program is nonvoluntary. It is a part of the operation of the institution.

MANDATORY PARTICIPATION IN EDUCATIONAL PROGRAM

Senator SPECTER. How is it working now? Is it working out when you say nonvoluntary? Can you not only lead the horses to water, but make them drink?

Mr. DOWNS. There is an exit mechanism in the program. If the inmate wants to make a conscious decision to leave the program, that is tolerated. However, that action will be entered in his parole record. It will be considered as an indication of a positive mental attitude and counted as to how much good time the individual has earned.

NUMBER OF INMATES IN EDUCATIONAL PROGRAM

Senator **Specter**. Well, those are fair motivations. How is it working? How many inmates are now a part of the education program?

Mr. **Downs**. Mr. Palmer, would you care to deal with the statistics for a minute.

Senator **Specter**. Welcome, Mr. Palmer.

Dr. Labat, pull up a chair.

Dr. **Labat**. Good morning, Senator. We are really pleased to let you know that since the last time we sat here, a lot has taken place. There are currently 1,921 different residents participating in various parts of the program.

Senator **Specter**. 1,921 residents?

Dr. **Labat**. 1,921 residents.

NUMBER OF PRISON INMATES

Senator **Specter**. How many residents are there in total in the prison?

Dr. **Labat**. There are approximately 3,600.

Senator **Specter**. Well, that is a substantial improvement over the past.

Dr. **Labat**. Yes, sir, Senator Specter. We feel that since the Mayor and the Director have taken steps to assure that the facility administrators and the educational specialists share the responsibility for making the program work, that there has been a greater degree of involvement by persons within the prison system.

BREAKDOWN OF PERSONS IN EDUCATIONAL PROGRAMS

Senator **Specter**. Now, you have 1,921 involved. How deeply are they involved?

Dr. **Labat**. As of May 29, we have 979 persons in our day program who are participating in classes on a 5-day-a-week basis. We have 520 persons enrolled in the night school program. Those persons are enrolled on Monday night and Wednesday night for a total of 6 hours per night.

In the Central Facility Vocational Program, we have involved 115 persons. We have included that number, Senator, in the 979. In our other vocational programs, we have included 422 students. We do acknowledge that we are spending the greatest deal of concentration on the vocational part of the program at this time.

If you recall, we started first with the night program. Then we moved to expand the day program; now we are moving full steam ahead with the vocational program. The Director, the Mayor, and all of the D.C. government forces have worked together to establish a laboratory within a laboratory at Youth Center I. It will include all of the innovative and expanding programs to serve as the model program within the facility.

MEASURING ACHIEVEMENT OF PROGRAM

Senator SPECTER. I know we have been at this only a short time so far, but what can you say, Dr. Labat, or Deputy Mayor Downs, about the prospects for showing concrete evidence of residents or inmates who are released who are no longer functional illiterates without a trade or skill, so we can start to test the achievement of the program?

Dr. LABAT. I want to share two kinds of statistics with you. We have moved with full force into the Computer-Assisted Instruction Program and into the Computer Training Program for residents.

We have tested a sample population at the Occoquan facility where you visited. From August of last year until the present time, we have increased the percentage rate of persons passing the GED from 10 to 90 percent by using the Control Data Plato system as a reinforcement to traditional classroom instruction.

Senator SPECTER. Dr. Labat, see if you can get to my question. My question is, at what point will we be able to measure success, that we are turning out residents, inmates, who have a trade or a skill, who are no longer functional illiterates so that we can bring a success story for the investment which we have made?

Dr. LABAT. Let me just indicate that several things are taking place in that direction. The Department has issued a request for proposals to 30 community groups in order that those groups might have the opportunity to assist the Government in identifying jobs for the residents who have completed the education program and are eligible for parole.

Senator SPECTER. You are talking about job opportunities?

Dr. LABAT. Yes; in addition to that we are happy to indicate that work has already begun on the creation of four Second Chance Centers within the District of Columbia. Those centers are going to be opening within a short period of time.

We do know that we will have 3 months of operation, July, August, and September, for those efforts to take place.

TIMETABLE FOR EVALUATING SUCCESS OF PROGRAM

Senator SPECTER. These programs went into effect, the funding went into effect on October 1, 1983, fiscal year 1984. So we have been at it now for less than 2 years; a little more than a year and a half. It was obviously taking a fair amount of startup time, but I would like to get some timetable on when we will be able to evaluate the success.

Mr. Downs, can you respond to that?

Mr. DOWNS. Senator, as you point out, it takes a while to get the individuals through the entire process, and to measure how successful they are adapting to the outside environment after a period of time.

One of our initial failures, which we have moved strongly to correct, was the rush of getting the Vocational Educational Program into place. We have gotten some individuals to where they are functionally literate.

Senator SPECTER. You say you have already gotten some who were functional illiterates to be functionally literate?

Mr. DOWNS. Yes.

Senator SPECTER. Can you give me an estimate as to how many?

Mr. DOWNS. The percentage of inmates passing their high school equivalence has increased from 57 to 73 percent since December 1984.

Senator SPECTER. What period?

Dr. LABAT. Since December 1984.

Senator LAUTENBERG. You have gotten the 50-something level to 73 percent?

Mr. DOWNS. Yes.

Senator LAUTENBERG. In people passing their high school diploma——

Mr. DOWNS. The pass/fail rate has gone from 57 to 73 percent, which is a significant increase in that period of time.

Senator SPECTER. Senator Lautenberg says that goes beyond being a functional illiterate.

Mr. DOWNS. In answer to your initial question, sir, I think it is fair to state that within the next 12 months or so we will have quantifiable data that will indicate the success of the vocational and educational programs. When we do place individuals on the street, along with a support structure, we can measure how well they are doing in the outside environment. Over the next 12 months or so, we will have statistical data which will show the progress of individuals who have gone through the full spectrum of the services and graduated into the work force.

Senator SPECTER. Well, I would say that timetable would be complimentary, if you can meet that timetable, within 12 months to start, to show some specific results.

PROGRESS OF EACH PARTICIPANT

Mr. Downs, I would like you to respond to this question in more detail in writing. What I would like to know is, I would like to see some details on the people who have been involved in the program so that we have names; the kinds of programs that they have been given, and the kinds of improvements that have been noted on test scores from the beginning point until you have evaluated their progress.

This whole effort is going to be very closely monitored, and I want to start to develop protocols for evaluation so that they are very tangible and very specific, and I think it is going to be a complex matter to do. The spotlight is going to be on you.

Mr. DOWNS. We keep an educational file on each of the inmates involved, and we would be glad to show you progress of the participants in the program.

JOB OPPORTUNITIES FOR INMATES IN EDUCATION PROGRAM

Senator LAUTENBERG. Mr. Chairman, if I might.

It is too early, really, to gauge the real value of the program, which is the chairman's objective, as I understand it. Is there anything other than the fact that you know there is educational progress taking place, that it has in any way been translated into significant job placement opportunity? Is there a job out there for these folks when they are finished?

Mr. DOWNS. We have some unique opportunities in our service economy. As you know, the unemployment rate in the suburban jurisdictions has dropped to remarkably low levels, 3 percent or so; there is a crying need for service level jobs, such as in the hotel industry and restaurants, et cetera, in these jurisdictions.

Our challenge is to target those opportunities and to train individuals with marketable skills. Through our Culinary Arts Training Program we have graduated over 160 residents in 2 years and all have been successfully placed in jobs.

DEVELOPING JOB OPPORTUNITIES

Senator SPECTER. Mr. Downs, Senator Lautenberg has put his finger on a critical aspect. I know from conversations with the Mayor and Mr. Ben-Veniste that an aspect that is going to have to be developed, and the issue is, what plans do you have for developing job opportunities? I know Mr. Ben-Veniste is going to comment later on that, in this proceeding, but why don't you inform the subcommittee now what you are working on in that vicinity?

Mr. DOWNS. One of the weaknesses in the program initially was the lack of a firm linkage with the institutions and the education programs within the institutions, and in turn an interface with our Department of Employment Services.

We are now developing working relationships with the State of Virginia for the sharing of job profiles in those areas, which will be fed through the Job Development Program which will in turn dictate the types of vocational education programs that will be set up to meet a demonstrated pipeline. We are not going to train folks for jobs that are not there.

Senator SPECTER. Mr. Downs, you are going to need some more help, from the Mayor, perhaps from the subcommittee, and from the private sector in providing job opportunities.

Mr. DOWNS. Absolutely. We have also learned that it is not enough to try and set up a vocational program all by ourselves and reinvent the wheel. It is more important to have on line workable programs that lead to employment that is available in the private sector marketplace. Turnkey vocational education programs are available.

We are not going to be experimenting on this population with what works and doesn't work, in terms of job skills development and vocational education. We are going to give them a set of skills that the marketplace is demanding now.

STATEMENT OF RODNEY AHITOW

Senator SPECTER. Let us turn at this point to Mr. Rodney Ahitow.

Mr. Ahitow, I have heard some very good things about you. As far as I understand it, you are a consultant to the Department of Corrections. You have been an assistant to the Illinois Department of Corrections.

I would like you to start off by giving us a little bit of your own background in the field of corrections, and then what your initial activities have been in the D.C. prison system.

Mr. AHITOW. Thank you, Senator.

To correct the witness list and the record, I did some special assignments for the director in the Illinois Department of Corrections. I was not his staff assistant. He would probably be displeased with that statement.

Senator SPECTER. Tell us a little bit about yourself, Mr. Ahitow. What is your educational background?

Mr. AHITOW. During my 15 years with the Illinois Department of Corrections, I held positions as teacher, principal; I was title 1, which is now chapter 1 in the Federal Education Consolidation Act, for the department school district. It was largely responsible for out of State parole. I have a bachelor's degree in educational administration. During my 15 years, I became actively involved in the Correctional Education Association, was the regional director within the CEA, and then was elected secretary-treasurer, and became president of the association in 1982.

Senator SPECTER. You are a consultant at this time to the D.C. Department of Corrections?

Mr. AHITOW. That is correct.

Senator SPECTER. How much time have you been spending on this assignment?

Mr. AHITOW. The last 60 days, I have been working 60 days at it. I have not been here personally, but I have been in constant communications with the director, with regards to reading and analyzing the program, and the progress the programs are making.

EVALUATION OF D.C. PROGRAMS

Senator SPECTER. What is your evaluation of how things are going with the D.C. programs?

Mr. AHITOW. Senator, I think the progress is excellent. I don't think we are at a point that we can come up with a true evaluation of how it is going to affect the recidivism rate in the D.C. area.

Education in its unique fashion, within a prison system, cannot be looked at individually. It has to be looked at in a totally outside environment. It is just one piece in a cog.

With the opening of the youth center 1, it could become a model for the Nation. Hopefully it will. Youth center 1 has the existing facilities that are fairly adequate to perform this unique task. There are vocational areas in place, there are academic classroom spaces. The administrator is very willing and educationally minded. The staff that will be in place will do an excellent job. We will be dealing with probably the worst inmates that are in the Director's 4,000 beds that he has to work with.

That is going to be unique. If we can rehabilitate, if the word is still being used in the country today, education and vocational training, and job preparation will be what is necessary for that to occur.

Senator SPECTER. Do you share my view that it is possible to rehabilitate? Take the residents, inmates, provide literacy training, vocational training, and give them a chance to earn a job on the outside, and be successful at it?

Mr. AHITOW. I share your view, and I think a number of us who have been in corrections for a number of years appreciate your view, and it needs to be expanded throughout the country to understand that vocational training is necessary if there is going to be rehabilitation.

Senator SPECTER. I know it has become very unpopular to talk about rehabilitation. I know some people in corrections have given up on it, saying it is not possible. I am convinced that it is. Not that we can rehabilitate everyone, but I think there are sufficient numbers that can be rehabilitated.

COMPARING LORTON PRISONERS WITH OTHER INSTITUTIONS

How do you evaluate the potential for D.C. prisoners at Lorton with other institutions around the country? Are others moving in the same direction with as much speed?

Mr. AHITOW. I think there are a lot of other States in the Nation that have already instituted programs of this magnitude. I know Illinois has. They have been facing an increase in their population as all other States have.

Senator SPECTER. Has Illinois succeeded in providing job training with functional illiterates so they can make it on the outside?

Mr. AHITOW. Yes; they have.

Senator SPECTER. Have they been successful?

Mr. AHITOW. The unemployment rate in Illinois is a little bit higher than it is here in the District of Columbia. Approximately 75 percent of the incarcerated inmates from Illinois come out of the Cook County, Chicago area, and that is where they are returning to. I think the neatness that you have here in the District of Columbia is that your inmates are housed 20 miles away, and that your transition back into the community can certainly be a model. It may not to be implementable around the Nation, because of the close proximity here of the jobs.

Senator SPECTER. Are there any statistics from Illinois about the recidivism rate?

Mr. AHITOW. I do not have any with me. I can get some for you.

Senator SPECTER. Are you aware of the experience of any other States on the experience of these modeling programs?

Mr. AHITOW. Well, the State of Texas was the first State in the Nation, back in 1970, I believe, that instituted a school district within the department of corrections. The school district concept was modeled being first in Texas, which at the time was one of the largest prison systems. They were able to appropriate money for vocational training within a school district within the department's budget. It was a separate budget.

Illinois did the same, and there are other States in the country that have done similar things; so the money got spent for educational and vocational training.

PREPARED STATEMENT

Senator SPECTER. Mr. Ahitow, I do not want to burden you unduly, but to the extent there are statistics available that show the progress or success rate, the subcommittee would be very interested to see it.

[The statement follows:]

STATEMENT OF RODNEY J. AHITOW

GOOD MORNING, MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE. I THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY ON THE STATUS OF THE INNOVATIVE AND CREATIVE PROGRAMS THAT ARE BEING DEVELOPED AT THE LORTON PRISON COMPLEX. MY COMMENTS WILL BE BRIEF AND I WOULD, OF COURSE, BE PLEASED TO ANSWER ANY QUESTIONS YOU MIGHT HAVE OF ME.

DURING MY FIFTEEN (15) YEARS WITHIN THE ILLINOIS DEPARTMENT OF CORRECTIONS, I HELD POSITIONS AS TEACHER, PRINCIPAL, TITLE I ESEA COORDINATOR FOR THE DEPARTMENT'S SCHOOL DISTRICT, AND WAS RESPONSIBLE FOR DOWNSTATE PAROLE. I, ADDITIONALLY, PERFORMED NUMEROUS SPECIAL ASSIGNMENTS FOR DIRECTOR MICHAEL P. LANE OF THE DEPARTMENT.

I WAS APPOINTED TO THE ILLINOIS RIGHT-TO-READ ADVISORY COUNCIL AND PARTICIPATED IN THE DEVELOPMENT OF THE STATE'S SPECIAL EDUCATION PLAN IN RESPONSE TO PL 94-142. I HOLD A BACHELOR'S DEGREE IN TEACHER ADMINISTRATION AND A MASTER'S DEGREE IN EDUCATION ADMINISTRATION FROM BRADLEY UNIVERSITY.

I HAVE BEEN ASSISTANT DIRECTOR AND DIRECTOR OF REGION III OF THE CORRECTIONAL EDUCATION ASSOCIATION AND WAS ELECTED NATIONAL SECRETARY/TREASURER OF THE CORRECTIONAL EDUCATION ASSOCIATION AND THEN PRESIDENT OF THE ASSOCIATION IN 1982-83. I CURRENTLY SERVE AS THE VICE-PRESIDENT OF THE ILLINOIS CORRECTIONAL ASSOCIATION.

IN MARCH OF 1985, I WAS RETAINED BY DIRECTOR JAMES F. PALMER OF THE DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS TO PROVIDE CORRECTIONAL EDCUATION AND CORRECTIONAL MANAGEMENT CONSULTATION.

AS A CONSULTANT REPORTING DIRECTLY TO MR. PALMER I HAVE BEEN PRIVILEGED TO HAVE HAD THE OPPORTUNITY TO REVIEW, ANALYZE, ASSESS AND EVALUATE THE PRESENT ACADEMIC AND VOCATIONAL EDUCATION PROGRAMS NOW IN PLACE AT THE LORTON PRISON COMPLEX, IN ADDITION TO THOSE PLANNED FOR THE FUTURE.

DURING THE PAST 60 DAYS, I HAVE REVIEWED NUMEROUS ASSESSMENT DOCUMENTS, LEGISLATIVE APPROPRIATION HEARINGS AND MATERIALS PROVIDED TO ME BY THE DIRECTOR'S STAFF. I HAVE TOURED THE LORTON FACILITIES AND THE D.C. DETENTION FACILITY AND DISCUSSED THE ISSUES AND

PROGRAMS WITH THE DIRECTOR, THE ASSISTANT DIRECTORS, THE ADMINISTRATORS, THE PRINCIPALS, THE TEACHERS AND INMATES.

I HAVE MET WITH MAYOR BARRY AND WITH OFFICIALS FROM THE DISTRICT OF COLUMBIA, LABOR LEADERS, FEDERAL OFFICIALS AND STAFF OF THE D. C. CORRECTIONAL FOUNDATION, AS WELL AS THE BOARD OF DIRECTORS OF THE CORRECTIONAL EDUCATION ASSOCIATION. MANY POSITIVE INITIATIVES HAVE OCCURRED DURING THE PAST EIGHTEEN (18) MONTHS SINCE FUNDS FIRST BECAME AVAILABLE BY THE SENATE APPROPRIATIONS COMMITTEE.

SENATOR, I WISH TO STRESS THAT THE PROGRAMS THAT HAVE BEEN EXPANDED IN THE PAST EIGHTEEN (18) MONTHS HAVE THE BEGINNINGS OF BEING THE NATIONAL MODEL THAT YOU ARE LOOKING FOR AND THAT THE COUNTRY NEEDS.

YOUR EXPECTATIONS ARE, NEEDLESS TO SAY, QUITE HIGH AND RIGHTFULLY SO. THE EFFORTS PUT FORTH THUS FAR BY THE DIRECTOR AND HIS STAFF I HOPE WOULD BE CONSIDERED BY YOU AS PHASE I, "THE DEVELOPMENT STAGE." PHASE II, THE FINE TUNING, IS ABOUT TO BECOME OPERATIONAL WITH THE OPENING OF YOUTH CENTER I.

AT THIS TIME, I WOULD LIKE TO SHARE WITH YOU THE REPORT OF THE MOST RECENT ASSESSMENT TEAM. ON APRIL 25, 26 AND 27 OF THIS YEAR, EXPERTS IN THE FIELD OF EDUCATON AND CORRECTONS CAME TO WASHINGTON, D.C. TO ASSESS THE EDUCATIONAL PROGRAM WITHIN THE DEPARTMENT OF CORRECTIONS. THE ASSESSMENT TEAM WAS COMPRISED OF TEACHERS AND ADMINISTRATORS IN HIGHER EDUCATION, CORRECTIONS EDUCATION, PUBLIC ADULT EDUCATION AND COMMUNITY-BASED EDUCATION, AS WELL AS PERSONS WITH EXPERIENCE IN ALL ASPECTS OF CORRECTIONS. I UNDERSTAND THAT COPIES OF THAT REPORT HAVE BEEN MADE AVAILABLE TO YOU AND YOUR SUBCOMMITTEE BUT I WOULD LIKE, AT THIS TIME, TO TELL YOU WHAT THE COMMITTEE SAW AND LEARNED AND RECOMMENDED DURING THAT THREE-DAY VISIT. BASICALLY, WE FEEL THAT THE EDUCATIONAL PROGRAMS NOW IN PLACE AT LORTON COULD VERY WELL SERVE AS THE BASIS FOR A NATIONAL EDUCATION PROGRAM. SUCH A PROGRAM, WITH VARIATIONS, COULD BE ADOPTED BY OTHER STATES AS A NATIONAL MODEL WHICH WOULD, IN FACT, REDUCE RECIDIVISM AND CRIME IN THE UNITED STATES.

THIS IS ONLY A BEGINNING. MORE NEEDS TO BE DONE. IN SUMMARY, MR. CHAIRMAN, WE MADE THE FOLLOWING OBSERVATIONS AND OFFERED THE FOLLOWING RECOMMENDATONS:

PROGRAMS

WHILE PROGRAM DESIGN AND CONTENT SEEM TO BE PROGRESSING SATISFACTORILY, CONTINUOUS ATTENTION MUST BE GIVEN TO ACCELERATING THE INSTALLATION AND IMPLEMENTATION OF NEW PROGRAMS, PARTICULARLY IN THE VOCATIONAL AREA.

PHYSICAL PLANT/ENVIRONMENT

MUCH NEEDS TO BE DONE IN THE AREA OF IMPROVING THE PHYSICAL ENVIRONMENT OF THE LORTON FACILITY. WHILE THE AGE OF THE FACILITY IS A FACTOR, MORE COULD BE DONE THROUGH FACILITIES MANAGEMENT WORKING WITH THE ADMINISTRATORS AND THE EDUCATIONAL SERVICES STAFF TO PROVIDE A MORE POSITIVE PHYSICAL (PLANT) ENVIRONMENT. RESIDENTS COULD BE USED AS WORK FORCE TEAMS TO ASSIST THE BASIC WORK FORCE IN PLANT ENVIRONMENTAL IMPROVEMENT.

INTERACTION

WE WERE PARTICULARLY IMPRESSED BY THIS ALL-IMPORTANT FACET OF THE EDUCATIONAL PROCESS. THERE IS OBVIOUS MUTUAL RESPECT BETWEEN RESIDENTS AND TEACHERS. THIS ATTITUDE IS VITAL TO THE SUCCESS OF THE PROGRAM.

APPRENTICESHIP

PROGRAM PLANS ARE EXCELLENT. ACCELERATED IMPLEMENTATION IS REQUIRED AND SHOULD BE CAREFULLY MONITORED TO ENSURE DESIRED RESULTS. THE CULINARY ARTS PROGRAM COULD BE EXPANDED IN VIEW OF THE EMPLOYMENT OPPORTUNITIES IN THIS GEOGRAPHIC AREA, SUCH AS IN THE FAST-FOOD SERVICES INDUSTRY.

INSTRUCTIONAL STAFF

APPEAR TO BE KNOWLEDGEABLE, DEDICATED AND ENTHUSIASTIC. THIS WAS MOST REFRESHING TO OBSERVE IN A CORRECTIONAL ENVIRONMENT.

PROGRAM SCHEDULING

AN ANALYSIS OF CURRENT SCHEDULING PRACTICES SHOULD BE UNDERTAKEN IMMEDIATELY WITH THE GOAL TOWARD IMPROVING REGULAR CLASSROOM ATTENDANCE.

VOCATIONAL PROGRAMS

RESIDENTS SHOULD BE ALLOWED TO HAVE MORE "LIVE WORK" -- WORKING WITH OUTSIDE EQUIPMENT, SUCH AS PRIVATE AUTOMOBILES, FURNITURE, COMPUTERS, TYPEWRITERS, T.V.'S, STEROS, ETC.

OVERALL EVALUATION OF VISIT

WE FEEL THAT THERE SHOULD BE REGULAR VISITATIONS BY CORRECTIONS/EDUCATIONAL/VOCATIONAL PROFESSIONALS WITH THE GOAL AT THE CONTINUING REVIEW AND THE DEVELOPMENT OF SPECIFIC ELEMENTS OF VARIOUS PROGRAMS.

MOST MEMBERS OF THE ASSESSMENT TEAM OFFERED RECOMMENDATIONS, SOME WITH GENERAL PROGRAM APPLICATION AND OTHERS WITH REFERENCE TO SPECIFIC PROGRAM FEATURES. FOLLOWING ARE GENERAL RECOMMENDATIONS:

1. FACILITY ADMINISTRATORS SHOULD SHARE MORE IN THE RESPONSIBILITY AND AUTHORITY FOR THE DAILY OPERATION OF THE PROGRAM. THE EDUCATIONAL SERVICES STAFF MUST RETAIN RESPONSIBILITY FOR PROGRAM CONTENT AND QUALITY, AS WELL AS FOR SUPERVISION OF EDUCATIONAL PERSONNEL. THE ROLE OF FACILITY ADMINISTRATOR SHOULD BE SUPPORTIVE AND FACILITATIVE. CONTINUOUS COMMUNICATION IS ESSENTIAL, PARTICULARLY AT THE UPPER LEVELS OF ADMINISTRATION.

2. AN ADVISORY GROUP SHOULD BE ESTABLISHED, IF ONE IS NOT NOW OPERATIONAL.

3. ADDITIONAL RESOURCES IN TERMS OF CURRICULUM DEVELOPMENT SHOULD BE PROVIDED TO ASSURE FURTHER IMPROVEMENT IN VOCATIONAL/ APPRENTICESHIP PROGRAMS.

4. A RESEARCH COMPONENT SHOULD BE ADDED. IT WOULD BE USEFUL IN FOLLOW-UP STUDIES AS WELL AS OTHER PERTINENT STUDIES.

IMPRESSION OF STAFF

IT WAS THE UNANIMOUS OPINION OF THE MEMBERS OF THE ASSESSMENT TEAM THAT DIRECTOR PALMER AND ASSISTANT DIRECTOR LABAT HAVE ASSEMBLED A GROUP OF DEDICATED, ENTHUSIASTIC AND CREATIVE PROFESSIONAL EDUCATORS. IT WAS CLEAR TO THOSE TEAM MEMBERS WHO PARTICIPATED IN THE PREVIOUS ASSESSMENT (SEPTEMBER 1984) THAT THERE HAS BEEN SIGNIFICANT PROGRESS MADE IN THIS PIONEER EFFORT TO DEVELOP A MODEL FOR A NATIONAL CORRECTIONAL EDUCATION PROGRAM -- A MODEL WHICH SHOULD ENHANCE THE INMATE'S ABILITY TO SUCCESSFULLY RETURN TO THE COMMUNITY AS PRODUCTIVE, LAW-ABIDING MEMBERS OF SOCIETY.

ONE OF THE MORE SIGNIFICANT ASPECTS WAS THE POSITIVE INTERACTION BETWEEN THE TEACHERS AND THE RESIDENTS. THE DEDICATION AND CONCERN OF THE TEACHERS WERE VERY OBVIOUS AND MOST IMPRESSIVE.

TO RETURN BRIEFLY TO THE IMMINENT OPENING OF YOUTH CENTER I, MR. CHAIRMAN, THE DIRECTOR'S REVIEW OF NUMEROUS RECOMMENDATIONS HAS LED HIM TO DECLARE THE REOPENING OF YOUTH CENTER I AS THE MODEL THAT, AFTER IT IS FINE TUNED, WILL BE INCORPORATED THROUGHOUT ALL LORTON FACILITIES. THE MODEL WILL GENERALLY INSURE,WITH APPROPRIATE FUNDING,THAT EVERY INMATE WITHIN YOUTH CENTER I WILL HAVE THE UNIQUE OPPORTUNITY TO PARTICIPATE IN BASIC EDUCATION, INCLUDING SPECIAL EDUCATION, CHAPTER 1 AND G.E.D. JOB DEVELOPMENT, WORK EXPERIENCE, AND A NUMBER OF OTHER VOCATIONAL TRAINING PROGRAMS, INCLUDING PRISON INDUSTRIES.

THE MODEL WILL UTILIZE THE TOTAL INSTITUTIONAL EXPERIENCE WITH THE GOAL OF RETURNING THE INMATE TO THE COMMUNITY AS A TAXPAYING, LAW-ABIDING CITIZEN.

THE EDUCATIONAL PROGRAMS WILL: (1) ADDRESS THE DEVELOPMENT OF LITERACY AND JOB SKILLS, (2) FOCUS ON ENTRY LEVEL SKILLS AND INDIVIDUAL EMPLOYABILITY, (3) BE COMPETENCY BASED OPEN ENTRY, OPEN EXIT, (4) BE DEVELOPED BASED ON INMATES' ASSESSMENT AND EVALUATION OF EMPLOYMENT AND EDUCATION SKILLS AND DEFICITS, AND (5) INCLUDE A COMPREHENSIVE PRE-RELEASE TRAINING JOB PLACEMENT AND PRE-PAROLE PROGRAM.

I BELIEVE THAT CONTINUED SUPPORT FROM THIS COMMITTEE WILL ALLOW THE MAYOR AND THE DIRECTOR TO FULLY IMPLEMENT AN EDUCATIONAL/VOCATIONAL PROGRAM THAT WILL POSITIVELY IMPACT THE TOTAL CORRECTIONAL COMMUNITY FOR WHICH THEY ARE RESPONSIBLE.

MR. CHAIRMAN, IN ENDING MY TESTIMONY TODAY, LET ME QUOTE FROM A RECENT ISSUE OF A LORTON PRISON PUBLICATION CALLED "THE INFORMER." REX GHOLSON, ALSO KNOWN AS ADUDAL HAKIM, AN INMATE AT LORTON AND A PARTICIPANT IN THE OCCOQUAN ACADEMIC DAY PROGRAM, WROTE TO HIS FELLOW INMATES: REGRETTING PAST FAILURES IS A WASTE OF TIME. LET THEM GO. BEGIN ANEW. RIGHT NOW. TODAY, USING THE EXPERIENCES FROM THE PAST TO AVOID THE PITFALLS IN THE FUTURE. YOUR MIND IS YOUR MOST POWERFUL TOOL. EACH OF US HAS SOMETHING WONDERFUL AND NECESSARY TO CONTRIBUTE TO LIFE. MR. CHAIRMAN, YOU AND THIS SUBCOMMITTEE AND YOUR COLLEAGUES IN THE UNITED STATES

SENATE, THROUGH THE EDUCATION PROGRAM AT LORTON, ARE MAKING IT POSSIBLE FOR THE HUNDREDS OF THOUSANDS OF MEN AND WOMEN INCARCERATED EVERYWHERE TO LEARN THE SKILLS THAT ARE NEEDED FOR THEM TO LEAD LAWFUL LIVES IN A LAW-ABIDING SOCIETY. YOU HAVE SHOWN THE WAY. THE INMATES AND STAFF AND PEOPLE OF THE NATION ARE READY TO FOLLOW. I URGE CONTINUATION OF THIS PROGRAM WITH THE UNDERSTANDING THAT IT BE EXPANDED AND THAT MONITORING BE MAINTAINED SO WE CAN ACHIEVE THE GOAL OF REDUCING RECIDIVISM AND CRIME IN AMERICA. IT CAN BE DONE.

THANK YOU.

BIOGRAPHICAL SKETCH

RODNEY J. AHITOW

EDUCATION:

-Irondequoit High School, Rochester, New York, 1964
-B.S./Education, Western Illinois University, Major - Physical Education, 1969
Minor - Audio Visual Education, 1969
-M.S./School Administration, Bradley University, 1972

CERTIFICATES:

State of Illinois - State Special Teaching Certificate K-14
Administrative Endorsement Certificate K-14

WORK EXPERIENCE:

October 1981 to present - Executive III (Assistant Administrator to Chief Administrative Officer) Department of Corrections, Juvenile Field Services

Functions as a Policy Expediting Manager for the Chief Administrative Officer, Juvenile Field Services; organizes, plans, executes, controls, and evaluates various programs within Juvenile Field Services, specifically in the areas of Juvenile Parole, foster/group home licensing, grants, and fiscal. Supervises administrative staff in the above areas. Facilitates the development of long and short range programs.

Analyzes monthly, quarterly, annual, and special reports submitted by district supervisors regarding caseload, transfers, receptions, classifications, releases, recidivism rates, authorized or unauthorized absences, etc. for all committed youth from downstate Juvenile Field Services. Determines and directs action to be taken for same.

Confers with and works closely with courts, state's attorneys, private groups, and individuals, etc. regarding committed youths and parolees and problem resolution involving programs for the individual youth, their placement, etc.; performs speaking engagements and community contracts to further the effectiveness of Juvenile Field Services' mission in serving youths.

Coordinates school re-entry and vocational placement programs within Downstate Juvenile Field Services.

Advise the Chief Administrative Officer of the Downstate budget needs, budget projections, contractual obligations, and grant applications; provides final review prior to approval.

Prepares correspondence, initiates personnel transactions, acts as personnel hearing officer and supervises district office supervisors.

Organizes district supervisors' meetings for purposes of policy and procedural revision.

March 1980 to October 1981 - Executive III (Administrative Assistant to Superintendent) Department of Corrections, Juvenile Area II - Parole Services

Subject to administrative approval of the Superintendent; Correctional Area II Juvenile Division, functions as a Policy Expediting Manager for Superintendent; organizes, plans, executes, controls, and evaluates various programs within Area II specifically in the areas of Juvenile Parole, foster/group home licensing, grants, and fiscal. Supervises administrative staff in the above areas.

August 1973 to March 1980 - Educational Executive I (Title I Coordinator) Department of Corrections/Juvenile Division, School District 428

Provided in-service and supervised Title I teachers and aids hired by the Department of Corrections working in eleven (11) State operated delinquent institutions and nine (9) adult facilities.

Wrote and assisted institutional personnel in writing Title I Activities and sub-sessions to conform with guidelines established by the State and Federal Offices; conducted ongoing evaluation of Title I activities by visiting institutions regularly; assisted institution personnel in writing Amendments to Title I Projects; submitted Amendments in approval form.

Responsible for the implementation of the Juvenile Division Cooperative Activity including evaluation, accounting procedures, and in-service training, reported the implementation of the activity in terms of the approved objectives; worked with Title I Accountant in procedural matters.

Supervised distribution of Title I Grants for School District 428; conferred with Title I supervisor in the Illinois Office of Education in the implementation of projects; interpreted and enforced all Title I policies and methods.

Submitted survey forms to Federal and State Agencies establishing eligibility yearly; directly involved in ongoing educational programs including curriculum development, staff development, and educational administrative meetings.

Prepared various statistical and budgetary reports on functioning and progress of project and expenditures used; e.g., Title I Project Activity, Application for Title I Grant, Survey of Children in Institutions, and Amendment of approved Title I Project; made reports on activities not being conducted according to approved project objectives and procedures.

October 1970 to August 1973 - Principal, Hanna City Boys School, Department of Corrections, Juvenile Division

Instruction and Curriculum Development
Pupil Personnel
Staff Personnel - School
Special Administrative Services - School
Organizing and Structuring - School
School Plant
School Finance and Business Management
Title I Administrator

September 1969 to October 1970 - Recreation Director, Hanna City Boys School

Responsible for physical education program, arts and crafts, v ty athletics, volunteer programs, intramurals, and recreation programs.

June 1969 to September 1969 - Recreation Worker, Hanna City Boys School

SALARIES AVAILABLE UPON REQUEST

SPECIAL ACTIVITIES: Xerox Management Discussion Sills Course - Supervisor a subordinates American Management Association; How to Imp Individual Manager Performance, A Multimedia in Company C e

Member - State of Illinois Right-to-Read Advisory Board, 1977 to 1978

Director, Region III, Correctional Education Association, 1976 to 1978

Assistant Director, Region III, Correctional Education Association, 1971 to 1973

President, Alumni Control Board, Delta Sigma Phi, Macomb, Illinois, 1972 to 1977

Vice President, Peoria Tennis Association, 1978

Board Member, Catalyst I High School, Peoria, Illinois, 1976 to 1978

Secretary/Treasurer, Correctional Education Association, 1979 to 1981

President, Correctional Education Association, 1982

Vice, President, Illinois Correctional Association, 1983 to 1985

PROFESSIONAL ORGANIZATIONS: National Association of Elementary School Principals
Illinois Audio-Visual Association
Correctional Education Association
Illinois Correctional Association
American Correctional Association

STATEMENT OF RICHARD BEN-VENISTE

Senator SPECTER. Let us turn to Mr. Ben-Veniste at this point. Let me thank you, Mr. Ben-Veniste, for your efforts. I know it has been a very long process, and I know that at Mr. Ben-Veniste's customary hourly rate, his contribution comes close to matching, if not exceeding, the $22 million put into the——[Laughter.]

Mr. BEN-VENISTE. Good point. Thank you, Senator Specter.

In the year or so that I have been involved in the program we have seen, I think, a steady curve that has not always been as sharpwardly upward as we might like, but I think we are in good shape now.

I would say that the Mayor's commitment, together with the Department of Corrections' initiative and aggressiveness in making this work, has paid dividends in the last few months since we have been before the subcommittee.

SUCCESS OF COMPUTER-ASSISTED INSTRUCTION

I think we can point to a couple of things that are milestones. The computer-assisted instruction has been an important milestone in getting the functional literacy rate up in the prison. The equipment which had been previously bought and which was not being utilized, and the new equipment which was bought under the new initiative is now hooked up, and it is operational, and I think the state-of-the-art Computer-Assisted Instruction Program provides the alternative to the type of system in which each of these inmates has almost universally failed in their individual histories. They have not done well in school; they have not responded to teachers; but they are responding to the computer, which they can take at their level, and indeed, it provides the individual with basically what is available in the best communities and best school districts in the United States.

Senator SPECTER. How do you account for that, Mr. Ben-Veniste, that they are able to deal at this rate?

Mr. BEN-VENISTE. Well, a lot of them had experiences in school, bad attitudes, discipline, whatever; and the computer does not come down on them for that. The computer is something they can work with. We have found as an adjunct to one-on-one instruction, or classroom instruction, this provides the kind of backup and reinforcement, and for an individual to see his progress and see his growth, without somebody coming down on him or being embarrassed, he can do it on his own, and the remarkable statistic which Dr. Labat talked about briefly, that in one facility, you have nine times greater pass rate on the high school equivalency test with use of the computer-instructed program.

PROBLEMS WITH TURNKEY PROJECTS

So this is providing dramatic statistical evidence that this initiative has done something already. With respect to the turnkey projects, that has not gone as quickly as we wanted them to. There have been problems. We have explored them.

I met with the Mayor personally, and explored some of the problems, and there is a commitment to come on line with additional turnkey projects which are available in the private sector, and which would be designed specifically for the Lorton population.

The Computer Repair Program from Control Data Co. is on line, and we should see some results of that. Again, this is something that is geared to a service society. Washington is filled with computers, they need repair people. We think that this program will pay dividends.

There is a restructuring of the administrative responsibility within the prison. Our advisory committee suggested that, and it is now in the process of being implemented. We think the idea of a lab within a lab at the Youth Center is a good idea. This would allow the D.C. Prison System to test the programs in-house before they go whole hog throughout the institution, keep what is good, export what is good to the rest of the prison, and if something doesn't work, reject it at minimal cost.

SECOND CHANCE CENTERS

I think it is good idea that they have rethought the second chance centers for employment. This system appeared to us to be the least cost effective way of obtaining job referrals and job assistance and placement for the inmates. The program has been scaled down somewhat; and instead there has been a commitment made by the Mayor's office and by the Department to utilize those institutions and individuals who have long labored in the vineyard without any kind of repayment on a voluntary basis, and against substantial odds to try to find jobs for prison inmates over the years.

A program is now in the process of being developed, and bids are being put out to these organizations so that they will be rewarded for placing inmates in jobs. If they are successful, they will get a new grant. If they are not successful, they will not. That makes a lot of sense to me.

SUPPLEMENTING JOB OPPORTUNITIES

Senator SPECTER. What do you think we need by way of supplementing job opportunities to help in the long-range development of this overall program?

Mr. BEN-VENISTE. I think we need an integrated, coordinated network to be set up to identify where the jobs are going to be, and I think that is in process, and then to encourage the private sector and both the city and local government in the tristate area, as well as the Federal Government, to make opportunities available for those inmates who now will have, we will certify, hopefully, when they come out of these programs, marketable job skills.

This will not be any WPA or any kind of a charity deal. This will be employment of people with skills, and will give them an opportunity. I think this is an area in which the Congress can do much to provide that extra opportunity for those who really need it.

Senator SPECTER. What should the Congress be doing on that?

Mr. BEN-VENISTE. Well, I think there are a number of things that can be done by way of tax incentives, by way of various kinds of encouragement to employ inmates who have gone through the system and have successfully completed the system.

In this regard, that would provide one of the greatest incentives to prisoners. I think something that Mr. Downs has touched on, and which I have been aware of for awhile, is the jewel in the crown of what you are trying to do, Senator, and that is this Culinary Arts Program.

CULINARY ARTS PROGRAM

The greatest test of success of the program will be the rate of recidivism. In the Culinary Arts Program over the past 2 years, not one single graduate of the Culinary Arts Program, all of whom are placed in jobs, has ever returned to prison.

Senator SPECTER. How many have there been? Do you know?

Mr. BEN-VENISTE. Approximately 60 individuals. Now, that, while a microcosm, is a staggering statistic in the face of what the normal recidivism is.

Senator SPECTER. I would say that is a good number.

Mr. BEN-VENISTE. So if we can provide jobs, there is ample demonstrable statistical evidence that people will stay out of jail.

Senator SPECTER. Some language that might be worth exploring would be to establish some sort of priority on Federal employment. The Appropriations Committee might use its authority to require that an expenditure of Federal funds by a variety of departments in Washington, DC, that priority be given to people who have received various kinds of training.

The tax incentives are going to be difficult to come up with, given the deficit and the nature of the tax problems that we are facing, but we require, as a matter of appropriations of U.S.-produced coal, no reason why we could not make a requirement that various Federal agencies employ Lorton-produced job applicants.

Mr. BEN-VENISTE. I think even if it is done on a project basis on a test basis, that agencies which naturally will have a threshold of anxiety to be overcome in employing an ex-offender, can be shown that these people will be able to hold jobs. That is where we are headed.

ENCOURAGEMENT FOR FEDERAL EMPLOYMENT

Senator SPECTER. Mr. Downs, I would appreciate it if you would take a look at the lines of potential employment within the Federal Government in the Washington, DC area, where we might give some encouragement for Federal employment.

If you could particularize some areas of your graduates there who could handle Federal jobs, we might use a variety of procedures, perhaps less than a mandate, but a mandate, if necessary, from the Congress.

Mr. DOWNS. Some of our graduates say that the hardest place to get employed is in the Federal Government. It is very difficult for an ex-offender to get into wage rate jobs in the Federal system. The selecting agency will choose whom they consider to be the lowest risk employee.

Senator SPECTER. We will work with you on that, and I think that we could do something on that subject within the Appropriations Committee itself.

Mr. DOWNS. Thank you very much.

Senator SPECTER. Well, this hearing has been very helpful. I would like to pursue the questions which were raised and not answered today. I would like to get as much specific information as we can about progress to date, and specifics on the individuals who are progressing. I would like to pursue the question about what more can be done on job training opportunities.

I would like to pursue with Mr. Ahitow the issue about success in other places as their experience might have some bearing on what ought to be done with the District of Columbia, and then we will have a hearing in the later stage on what our appropriations ought to be for next year, in terms of the adequacy of the funding; and whether we have the resources to move ahead with the jobs which are already underway.

This is very helpful.

Does anybody have anything they would like to add at this juncture?

PROVIDING EDUCATIONAL PROGRAMS AT OAK HILL FACILITY

Mr. DOWNS. I would only raise one other issue that we have overlooked in our initial funding profile. A very important component of the criminal justice continuum is the Oak Hill facility, which houses offenders from 13 to 18 years old. We are developing now a program to meet those individuals' educational needs as well, and plug them directly into an education program. It turns out that 50 to 70 percent of Mr. Palmer's inmates are graduates of that juvenile justice system. If we can reach even further down into the justice system to these youngsters, we think that we can reduce their chances of future incarceration.

Senator SPECTER. The subcommittee would be very interested in hearing the specifics on that when we look to the appropriations process. Mr. Palmer.

REMARKS OF DIRECTOR, DEPARTMENT OF CORRECTIONS

Mr. PALMER. I would like to let you know that while we have an overcrowded system, your programs and efforts have had a positive effect on the security of these facilities.

As you know, I am a person who believes in safe and secure facilities, but I must say to you, if you want some success, if you take the large number of persons who are incarcerated in the D.C. detention facilities, and considering the type of persons that we have there, and the large number of persons that are incarcerated at our Lorton complex, and consider the conditions there, I am sure that you can see that there is today a great degree of success, because those people are occupying their time in classrooms. From a realistic standpoint, a person who is incarcerated 365 days, 7 days a week, does need some attention. I think that speaks for itself very loud and clear. For all the troubles that we are having in institutions, although we have a tremendous problem there, I think that you have helped address the fact that we do have a degree of competency.

SUBCOMMITTEE RECESS

Senator SPECTER. I am glad to hear that, Mr. Palmer. It is a tremendous help to prison management.

Thank you very much. The subcommittee will recess subject to the call of the Chair.

[Whereupon, at 12:20 p.m., Thursday, June 6, the subcommittee was recessed, to reconvene at 11:15 a.m., Tuesday, June 11.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, JUNE 11, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 11:15 a.m., in room SD-192, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Lautenberg.

DISTRICT OF COLUMBIA

OFFICE OF THE MAYOR

STATEMENTS OF:

HON. MARION S. BARRY, JR., MAYOR

HON. DAVID A. CLARKE, CHAIRMAN, CITY COUNCIL

ACCOMPANIED BY:

BETSY REVEAL, BUDGET DIRECTOR

RICHARD SIEGEL, COUNCIL BUDGET DIRECTOR

OPENING STATEMENTS

Senator SPECTER. The District of Columbia Subcommittee of the Appropriations Committee will convene.

We are pleased today to have the Mayor from the City of Washington, the Honorable Marion S. Barry, Jr., and the Chairman of the Council of the District of Columbia, the Honorable David A. Clarke, as we move ahead on the consideration of the budget for the District of Columbia for fiscal year 1986.

We have had cordial, very cooperative relationships with the Mayor and the City Council in the past, and we look forward to a continuation of that cooperative effort between this subcommittee and the full committee and the District of Columbia. We mean to be helpful to the District on a variety of projects, recognizing the principle of home rule means control by the Mayor and the City Council, but I think we have made some significant progress on a number of lines such as corrections which has been a premier consideration of this committee and on education, on the truancy program and the merit pay for teachers, and on some of the job training programs and some housing measures, on mental retardation. We have looked to the District of Columbia as a potential model city, and that is the kind of activities that I would look forward to in the future as we tackle the budget consideration for fiscal year 1986.

I am pleased to yield to the distinguished ranking member of the committee on the Democratic side, Senator Lautenberg of New Jersey.

OPENING STATEMENT OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman.

I am pleased to join in welcoming and meeting Mayor Barry and the Council Chairman, Mr. Clarke, this morning. I have not been on the subcommittee very long nor have I been in Washington very long—I am finishing my second year—but I know I learned enough in that period of time, both in terms of my ranking responsibility on this subcommittee and from my life here in Washington to know you two people have a very tough job. Your business is conducted in what is perhaps the most visible city in our country, and certainly the place that so much goes on that reflects the character and problems of our society in general. This city cannot be a simple place to govern, as it has that special status and, of course, has those special challenges. I guess there is no other city that has to cope with as many problems. Certainly, there aren't any that have to deal with Congress, including some of the temperament of the Congress, Federal bureaucracy, diplomats, and political protestors on a routine basis. At the same time, of course, the city has its own life. It has most of the problems that we see in modern urban America: poverty, crime, drug abuse, economic and social decay surrounded by great wealth and privilege, and there are no easy or cheap solutions.

As you know, I come from New Jersey, and we have an idea how tough it is to manage these issues responsibly. New Jersey is the most densely populated State in the Union. We are ninth in size in the Union, fourth in income per capita and, overall, our economic outlook is very bright. We have, at the same time, several of America's poorest cities. One is my birthplace, Paterson, NJ, which is the fifth poorest city in all of America. Newark is No. 1 on the list of large poverty stricken cities. And in cities of less than 100,000, Camden, NJ, our southernmost city, ranks first in poverty. So I am familiar with some of the problems that exist in those cities. What happens in a structure like ours is that we have those people who are enjoying the best of the economic opportunity in our society and those who are on the other end of the spectrum are left out. In employment, in terms of education, in terms of health care, in terms of crime. So we share a common interest as well as common experiences in that regard.

So I come here with an appreciation for the difficulties as well as the opportunities you face, and I am sure, Mayor, we will not always agree, but constructive criticism is inherent in my oversight responsibilities. You can count on my good will and support as we work together to make Washington the kind of place that we like to be and preserve its special character as the Nation's Capital.

I look forward, Mayor, and Chairman Clarke, to an opportunity to get to see some of the particular things in the city that you think ought to be of concern in my capacity as the senior member on the Democratic side of this subcommittee. I would like to know more about the inner workings of the city. I see some of the problems out on the street as I drive from a very nice apartment to my office here. I see people sleeping on the street, on Virginia Avenue, and it concerns me. It is an unpleasant thing to witness because we know, for whatever reason, these people are left out, and I am curious about why they are left out and what we can do.

The problem is not unique. You see it in every major city in the country and other problems that are apparent to the eye as one rides through the city, but there is so much more to it than that, and I again want to learn about it from your vantage point.

I intend to take my responsibilities very seriously as the ranking member of this subcommittee. I look forward to our opportunity to get together beyond this very formal setting we are in now and, Mr. Chairman, I commend you on the leadership you have taken in chairing this subcommittee and getting into the problems and asking a lot of questions that I think must be asked in terms of your interest in the community at large and your responsibilities as chairman of this important subcommittee. I look forward to hearing from our witnesses today.

Senator SPECTER. Thank you very much, Senator Lautenberg.

The prepared statements will, of course, be made part of the record, and to the extent that they can be summarized, leaving the maximum time for dialog, we would appreciate it.

We turn now to you, Mr. Mayor.

STATEMENT OF MAYOR BARRY

Mayor BARRY. Thank you, Mr. Chairman.

Again it is a great pleasure to welcome Senator Lautenberg to this committee, and to our first formal hearing. Mr. Chairman, we have both formal and informal relationships about our respective concerns.

Senator Lautenberg, we look forward to meeting with you later on after this hearing, and talking informally about some of our concerns.

Mr. Chairman, I would like to thank you for your commitment to this committee and the kind of time and attention you have put on it. For a long time, the Senate Subcommittee on Appropriations of the District of Columbia was not committed to the concerns of the District of Columbia. You are taking a keen interest in this subcommittee and the District and we appreciate that. You have looked at the policy issues of the budget as opposed to the line item approach to the budget, trying to figure out programmatically where we ought to be going and doing it in partnership.

As you mentioned earlier, we certainly have been helped by your support and focus on the correctional system. I think we are better off for it. Our corrections system is now underway. Our Parole Board, as you know, has a new chairman, Walter Ridley, who has had a number of years of experience in the Department of Corrections and brings leadership to be able to articulate the Board's position and wrestle with some of the difficult problems facing the parole system.

The judges, for instance, are in the process of looking at our Parole Board to make sure the membership reflects the philosophy and direction we are trying to go. The Department of Corrections is in better shape than ever before in terms of having expanded some four facilities since 1979, including 1,900 beds at Lorton, VA. We appreciate your focusing an interest on the criminal justice system, not to mention our educational program which witnesses testified about last week. We have made considerable progress, not enough as I indicated in my letter to you publicly. We took on very difficult situations, but I think we are on the road to becoming a model program for both State and Federal prisons around the Nation.

So I thank you, Mr. Chairman, and other committee members, for your focus and attention, especially in the education area of our corrections system, as well as, in the area of drug abuse and substance abuse.

PREPARED STATEMENT

I would like permission to enter my formal statement in the record.

Senator SPECTER. It will be made a part of the record, Mr. Barry.

[The statement follows:]

STATEMENT OF MAYOR BARRY

MR. CHAIRMAN, AND MEMBERS OF THE COMMITTEE, IT IS A PLEASURE TO APPEAR BEFORE YOU TODAY TO PRESENT THE DISTRICT OF COLUMBIA'S FISCAL YEAR 1986 BUDGET AND TO SHARE WITH YOU THE PHILOSOPHY AND GOALS UPON WHICH THIS BUDGET IS BASED.

WHEN I SUBMITTED THE FY 1986 BUDGET TO THE COUNCIL OF THE DISTRICT OF COLUMBIA IN FEBRUARY, I STATED THAT IT WAS A BUDGET FOR LEADERSHIP, PEOPLE AND PROGRESS--A BUDGET THAT SETS THE FOUNDATION FOR HOME RULE'S SECOND DECADE AND A BUDGET THAT REFLECTS THE BENEFITS OF FIVE YEARS OF RIGOROUS FINANCIAL MANAGEMENT AND CREATIVE VISION ABOUT THIS COMMUNITY AND ITS FUTURE.

WE APPROACH FISCAL YEAR 1986 WITH A SENSE OF CAUTIOUS OPTIMISM. WHILE OUR LOCAL UNEMPLOYMENT RATE REMAINS INTOLERABLY HIGH, IT IS AT LEAST ON A DOWNWARD TREND. NATURAL REVENUE GROWTH, WITHOUT INCREASES IN TAXES OR TAX RATES, WILL PRODUCE REVENUES THAT ARE 5.4 PERCENT HIGHER IN FY 1986 THAN OUR REVISED FY 1985 ESTIMATES--THE MOST FAVORABLE INITIAL FINANCIAL OUTLOOK OF ANY YEAR SINCE I HAVE BEEN IN OFFICE.

WE HAVE ACHIEVED FOUR CONSECUTIVE YEARS OF BUDGET BALANCE--UNDER THE MOST STRINGENT POSSIBLE ACCOUNTING STANDARDS--AND REDUCED THE ACCUMULATED GENERAL FUND DEFICIT BY NEARLY $110 MILLION SINCE IT WAS FIRST IDENTIFIED IN 1979.

FISCAL YEAR 1985 WILL AGAIN, FOR THE FIFTH CONSECUTIVE YEAR, END WITH A BALANCED BUDGET AND SIGNIFICANT, $20.1 MILLION ADDITIONAL REDUCTION IN THE ACCUMULATED GENERAL FUND DEFICIT. FEW OTHER CITIES OR STATES--MANY OF WHICH CONTINUE TO FACE FINANCIAL HARDSHIP AND CONSTRAINT--CAN BOAST AS SUCCESSFUL A RECORD OF FINANCIAL MANAGEMENT AS THE DISTRICT OF COLUMBIA. IT HAS NOT COME EASILY OR WITHOUT DIFFICULT AND TRYING DECISIONS THESE PAST FIVE YEARS. HARDWORK, A COMMITMENT TO THE HIGHEST POSSIBLE STANDARDS OF MANAGEMENT, AND VIGILANT AND PERSISTENT OVERSIGHT OF ALL ASPECTS OF OUR FINANCES HAVE ALLOWED US TO ACHIEVE THESE RESULTS.

I AM ESPECIALLY PROUD THAT THIS RECORD, ACCOMPLISHED WITH THE ACTIVE SUPPORT OF THE COUNCIL OF THE DISTRICT OF COLUMBIA AND THIS CONGRESS, HAS ALLOWED US TO ACHIEVE A REAL LANDMARK IN HOME RULE'S DEVELOPMENT--SUCCESSFUL ENTRY INTO BOTH THE SHORT- AND THE LONG-TERM MUNICIPAL BOND MARKETS.

THE NATIONAL INVESTMENT COMMUNITY'S ASSESSMENT OF DISTRICT FINANCIAL MANAGEMENT AND OUR LONG-TERM FISCAL OUTLOOK BARES CAREFUL ATTENTION BY THIS COMMITTEE. ON SHORT-TERM BONDS WE RECEIVED THE HIGHEST POSSIBLE CREDIT FROM BOTH OF THE MAJOR, NATIONAL RATING AGENCIES--STANDARD AND POOR'S AND RATING MOODY'S, A RARE AND UNUSUALLY POSITIVE OUTCOME FOR A BRAND NEW ISSUER.

ON OUR LONG-TERM BONDS WE RECEIVED LOWER (BUT STILL INVESTMENT GRADE) RATINGS, WITH THE DIFFERENCE PRIMARILY ATTRIBUTED TO OUTSTANDING, UNRESOLVED ISSUES OF FEDERAL-LOCAL FISCAL RELATIONS. THE LACK OF A FORMULA BASED FEDERAL PAYMENT, THE MASSIVE PROBLEM OF UNFUNDED PENSION LIABILITIES FOR POLICE OFFICERS, FIREFIGHTERS, TEACHERS AND JUDGES, THE LACK OF FULL LOCAL BUDGET AUTONOMY, OUR INABILITY TO TAX NON-RESIDENT INCOME, AND THE REMAINING DEFICIT WERE ALL CITED BY THE RATERS AS IMPEDIMENTS TO HIGHER GRADES--AND CORRESPONDINGLY LOWER BORROWING COSTS.

TO ILLUSTRATE THE IMPORTANCE OF THE HIGHEST POSSIBLE RATINGS TO DISTRICT TAXPAYERS LET ME CITE JUST ONE EXAMPLE: IN OUR MOST RECENT LONG-TERM GENERAL OBLIGATION BOND ISSUE (WHICH WE WILL CLOSE ON TOMORROW) WE ISSUED A TOTAL OF $173 MILLION, OF WHICH $50 MILLION WAS FOR TWENTY YEAR TERM BONDS AT AN

EFFECTIVE RATE OF INTEREST OF 9.83 PERCENT. OVER THE LIFE OF THESE BONDS DISTRICT TAXPAYERS WILL PAY A TOTAL OF $66 MILLION IN INTEREST. HAD WE RECEIVED THE HIGHER RATINGS THAT WE BELIEVE WERE DESERVED WE WOULD HAVE SAVED AT LEAST $4 MILLION IN INTEREST COSTS--THE EQUIVALENT OF THE FULL ANNUAL BUDGET FOR OUR PUBLIC DEFENDER, UNEMPLOYMENT COMPENSATION PROGRAM, OR THE PAROLE BOARD, OFFICE ON HUMAN RIGHTS, JUDGES' RETIREMENT AND OFFICE OF MINORITY BUSINESS COMBINED.

WHEN THIS POTENTIAL SAVINGS IS MULTIPLIED OVER THE ENTIRE CURRENTLY AUTHORIZED AND PLANNED NEW SIX-YEAR CAPITAL PROGRAM, THE DIFFERENCE IS **$206 MILLION**. IF OUR CREDITWORTHINESS IS NOT ENHANCED BY AFFIRMATIVE ACTION ON THE ISSUES THAT REMAIN OF CONCERN TO THE RATING AGENCIES, LOCAL TAXPAYERS WILL BEAR, AT MINIMUM, A $206 MILLION GREATER BURDEN THAN NECESSARY OVER THE NEXT TWO DECADES TO SUPPORT DISTRICT CAPITAL EXPENDITURES.

ESTABLISHMENT OF A FORMULA-BASED FEDERAL PAYMENT, A LONG-TERM PLAN FOR ELIMINATION OF THE UNFUNDED PENSION LIABILITIES (WITH FEDERAL FINANCIAL PARTICIPATION) AND EXPANSION OF THE DISTRICT'S LOCAL TAXING AUTHORITY ARE ALL FUNDAMENTAL TO IMPROVED RATINGS. I HOPE THAT DURING THE COURSE OF CONGRESSIONAL REVIEW OF THE FY 1986 BUDGET AT LEAST SOME OF THESE ISSUES CAN BE ADDRESSED AND AFFIRMATIVELY RESOLVED.

LET ME BRIEFLY REVIEW WITH YOU THE KEY ELEMENTS OF OUR PROPOSED FISCAL YEAR 1986 BUDGET.

A TOTAL OF **$2,272,906,000** IS PROPOSED FOR THE DISTRICT'S GENERAL FUND IN FY 1986. THIS REPRESENTS AN INCREASE OVER OUR REVISED, FY 1985 BUDGET OF $116,633,000, OR 5.4 PERCENT. OF THE TOTAL INCREASES PROPOSED, APPROXIMATELY $40 MILLION IS FOR MANDATED, NON-DISCRETIONARY COSTS--INCLUDING (AMONG OTHERS) MEDICAID, RETIREMENT CONTRIBUTIONS, WMATA, FEDERAL BUREAU OF PRISONS PAYMENTS, AND DEBT SERVICE.

AN ADDITIONAL $32 MILLION REPRESENTS THE COSTS OF COLLECTIVELY BARGAINED PAY INCREASES--AVERAGING 3.5 PERCENT FOR FY 1986.

WE HAVE BEEN PLEASED BY THE OUTCOME OF THE SECOND FULL ROUND OF EMPLOYEE COMPENSATION BARGAINING IN THE DISTRICT OF COLUMBIA. OUR NON-UNIFORM UNIONS AND THE FIREFIGHTERS AND CORRECTIONAL OFFICERS CONCLUDED AGREEMENTS PROVIDING FOR AN AVERAGE 3 PERCENT BONUS IN FY 1985, 3.5 PERCENT BASE PAY INCREASE IN FY 1986 AND 4.0 BASE INCREASE IN FY 1987. THE SAVINGS FROM THE LUMP-SUM BONUS INSTEAD OF BASE INCREASE IN FY 1985 ALONE EQUALS $62 MILLION DISTRICT-WIDE, OVER THE THREE YEAR CONTRACT PERIOD.

WE BELIEVE THAT THE AGREEMENTS REACHED THUS FAR, (AND HOPEFULLY SIMILAR TERMS ON THE NEGOTIATIONS STILL UNDERWAY), STRIKE THE PROPER BALANCE BETWEEN THE INTERESTS OF OUR DEDICATED AND HARDWORKING EMPLOYEES AND THE NEED TO MAINTAIN WORKFORCE LEVELS, AVOID PAINFUL LAYOFFS AND ENSURE THAT COMPENSATION REQUIREMENTS DO NOT UNDERMINE OUR ABILITY TO MEET OTHER MANDATED AND PROGRAM NEEDS.

THE REMAINING $47 MILLION IN NET INCREASES TO THE DISTRICT'S REVISED, FY 1985 BUDGET (REPRESENTING JUST 2 PERCENT OF THE OVERALL REQUEST) COVERS ALL OTHER INFLATIONARY COSTS AS WELL AS SELECTED NEW PROGRAM INITIATIVES. LET ME HIGHLIGHT THE MOST SIGNIFICANT OF THESE NEW PROGRAM EFFORTS:

DRUG ABUSE EDUCATION, PREVENTION AND TREATMENT

CURRENT ESTIMATES INDICATE THAT THERE ARE SOME 12,500 HEROIN ADDICTS AND 60,000 "POLY DRUG" (INCLUDING PCP, COCAINE, MARIJUANA AND OTHER) USERS IN THE DISTRICT OF COLUMBIA.

A TRAGICALLY HIGH PROPORTION OF THESE DRUG ABUSERS ARE OUR YOUNG PEOPLE--OFTEN AS YOUNG AS ELEMENTARY SCHOOL AGE.

THE FISCAL YEAR 1986 BUDGET PROPOSES A TOTAL INCREASE OF $5,828,000 IN DRUG TREATMENT PROGRAMS WITHIN THE DEPARTMENT OF HUMAN SERVICES ALCOHOL AND DRUG ABUSE ADMINISTRATION (ADASA). $1,633,000 OF THIS AMOUNT IS TO BE USED FOR A COMPREHENSIVE DRUG TREATMENT PROGRAM FOR YOUNG PEOPLE INVOLVED WITH PCP. THE NUMBER OF EMERGENCY ROOM VISITS FOR PCP IN THE DISTRICT INCREASED BY 215 PERCENT FROM 1981 TO 1983 ALONE--REPRESENTING THE SINGLE MOST DEVASTATING DRUG PROBLEM TO WHICH OUR SONS AND DAUGHTERS ARE NOW REGULARLY EXPOSED.

A TOTAL OF $1,000,000 IS PROPOSED TO EXPAND PREVENTION SERVICES IN THE D.C. PUBLIC SCHOOLS. THIS PROGRAM IS BEING DEVELOPED THROUGH CLOSE COOPERATION BETWEEN THE DEPARTMENT OF HUMAN SERVICES AND THE SCHOOL SYSTEM AND HAS THE FULL SUPPORT OF MY ADMINISTRATION AS WELL AS THE BOARD OF EDUCATION.

A TOTAL OF $1,400,000 IS PROPOSED FOR THE ESTABLISHMENT OF TWO, 10-BED DETOXIFICATION CENTERS--FOR PCP, AND HEROIN AND COCAINE DETOXIFICATION RESPECTIVELY. A TOTAL OF $400,000 IN ADDITIONAL FUNDING IS PROPOSED TO ENHANCE THE CRIMINAL JUSTICE PROGRAM OPERATED BY DHS IN SUPPORT OF THE D.C. SUPERIOR COURT. THE REMAINING $1,395,000 IN INCREASES FOR DRUG TREATMENT ARE PROPOSED FOR A VARIETY OF STAFFING AND OTHER PROGRAM ENHANCEMENTS THROUGHOUT EXISTING DRUG PROGRAMS. [THESE INCREASES ARE DETAILED ON PAGES 62-165 THROUGH 66-167 OF VOLUME III OF THE FY 1986 SUBMISSION.]

BUSINESS, ECONOMIC, AND COMMUNITY DEVELOPMENT

THE FISCAL YEAR 1986 BUDGET INCLUDES SEVERAL INNOVATIVE AND EXCITING NEW INITIATIVES IN THE AREAS OF BUSINESS AND ECONOMIC DEVELOPMENT. THIS EMPHASIS IS CONSISTENT WITH THE MAJOR GOAL OF MY SECOND ADMINISTRATION--TO ENSURE THAT THE DISTRICT TAX BASE EXPANDS AND THAT ECONOMIC VITALITY AND GROWTH--BENEFITTING DISTRICT RESIDENTS IN PARTICULAR--ARE RESTORED THROUGH NEW BUSINESS, NEW JOBS AND NEW DEVELOPMENT.

THIS CONGRESS HAS WATCHED WITH INTEREST ONE OF OUR EARLIEST VENTURES IN MAJOR ECONOMIC DEVELOPMENT IN THE DISTRICT--THE CONSTRUCTION OF THE WASHINGTON CONVENTION CENTER. THIS MAGNIFICENT FACILITY, THE FLAGSHIP OF MY ECONOMIC DEVELOPMENT PROGRAM, WAS COMPLETED ON-TIME AND WITHIN BUDGET. I AM PLEASED TO REPORT THAT THE MOST RECENT ANALYSIS OF THE CENTER INDICATES THAT IT WILL GENERATE MORE THAN $99 MILLION IN TAX REVENUE FROM DELEGATE SPENDING, AND HOTEL, RESTAURANT, RETAIL AND OFFICE SPACE EXPANSION BY 1989. MORE THAN 300,000 NEW CONVENTION DELEGATES PER YEAR AND MORE THAN 7,000 NEW JOBS ARE ADDITIONAL BENEFITS BEING REALIZED FROM THE CENTER'S EXISTENCE. BUT THE CONVENTION CENTER IS BUT ONE ELEMENT OF A MUCH BROADER STRATEGY OF ECONOMIC, COMMUNITY, AND NEIGHBORHOOD DEVELOPMENT--A STRATEGY EMBODIED BY MANY OF THE PROGRAMS INCLUDED IN THE FY 1986 BUDGET.

IN THE OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT A TOTAL OF $4,000,000 IS PROPOSED FOR CAPITALIZATION OF THE NEW ECONOMIC DEVELOPMENT FINANCE CORPORATION, ESTABLISHED BY COUNCIL LEGISLATION IN 1984. UNDER THE TERMS OF THE EDFC LEGISLATION, UP TO $10,000,000 IS TO BE CONTRIBUTED BY THE DISTRICT, MATCHED DOLLAR FOR DOLLAR BY PRIVATE CONTRIBUTIONS, FOR PURPOSES OF CREATING A CAPITAL POOL TO LEVERAGE PRIVATE INVESTMENT AND STIMULATE DEVELOPMENT WITHIN THE DISTRICT OF COLUMBIA.

A TOTAL OF $3,337,000 IS PROVIDED FOR A NEW BUSINESS PURCHASE ASSISTANCE PROGRAM. MODELED ON OUR NOW HIGHLY SUCCESSFUL HOME PURCHASE ASSISTANCE PROGRAM (HPAP-WHICH HAS HELP MORE THAN 1,000 DISTRICT FAMILIES PURCHASE THEIR OWN HOMES TO DATE), THESE FUNDS WILL ALLOW NEW LOCAL ENTREPRENEURS TO SAVE OR PURCHASE CURRENTLY FAILING BUSINESS PROPERTIES AND RESTORE THEM TO ECONOMIC HEALTH. ABANDONED BUILDINGS IN NO LONGER ACTIVE NEIGHBORHOOD AND DOWNTOWN COMMERCIAL STRIPS WILL BE ACQUIRED BY THE DISTRICT OR THROUGH THE SUPPORT OF THE DISTRICT AND MADE AVAILABLE--IN PARTICULAR TO SMALL AND MINORITY BUSINESSPEOPLE--AT LOW COST.

TO COMPLEMENT THIS NEW APPROACH TO BUSINESS RETENTION AND GROWTH, WE ARE ALSO REQUESTING $80,000 TO IMPLEMENT A SPECIAL SMALL BUSINESS ASSISTANCE PROGRAM IN THE OFFICE OF MINORITY BUSINESS ASSISTANCE. THESE FUNDS WILL SUPPORT A STAFF DEDICATED SOLELY TO THE PROVISION OF SUPPORT FOR MINORITY SMALL BUSINESS OWNERS OR ENTREPRENEURS TRYING TO ESTABLISH THEIR FIRST VENTURES.

IN COMBINATION THESE TWO PROGRAMS WILL PROVIDE BADLY NEEDED ASSISTANCE TO THE DISTRICT'S SMALL BUSINESS COMMUNITY IN THE HOPES THAT MORE OF THESE BUSINESSES WILL STAY IN THE DISTRICT AND THAT MORE SMALL AND MINORITY BUSINESS OPERATORS WILL BE ATTRACTED TO DO BUSINESS IN NEIGHBORHOODS THAT HAVE BEEN WITHOUT NEEDED SERVICES FOR TOO LONG.

WASHINGTON, D.C. IS TRULY AN INTERNATIONAL CITY, AND IT IS IN INTERNATIONAL COMMERCE AND EXCHANGE THAT THE DISTRICT SEES ITS MOST EXCITING ARENA FOR JOB CREATION AND TAX BASE EXPANSION.

AS HOST TO 130 FOREIGN EMBASSIES AND MISSIONS, AS THE HOME OF THE WORLD BANK, INTERNATIONAL MONETARY FUND AND WORLD HEALTH ORGANIZATION, AND AS THE SEAT OF THE MOST POWERFUL DEMOCRATIC COUNTRY IN THE WORLD, WASHINGTON PROVIDES THE NATION'S MOST ATTRACTIVE MARKET FOR INTERNATIONAL COMMERCE.

IN ORDER TO CONVERT THAT POTENTIAL INTO JOBS AND TAX REVENUES FOR THIS COMMUNITY, I HAVE, WITH THE COOPERATION OF COUNCIL CHAIRMAN CLARKE, COUNCIL HOUSING AND ECONOMIC DEVELOPMENT CHAIRPERSON JARVIS, AND THEIR COLLEAGUES, AGGRESSIVELY SOUGHT THE ESTABLISHMENT OF ECONOMIC LINKS WITH SISTER CITIES AND STATES AROUND THE GLOBE. THE PEOPLE'S REPUBLIC OF CHINA, THAILAND, SOUTH KOREA, SENEGAL, NIGERIA, KENYA AND BELGIUM ARE AMONG THE COUNTRIES WITH WHICH THE DISTRICT IS ACTIVELY NEGOTIATING FOR EXCHANGE AND COMMERCIAL VENTURES AT THE PRESENT TIME.

IN ORDER TO TURN THIS PROMISING BEGINNING INTO A PERMANENT ELEMENT OF THE DISTRICT'S ECONOMIC DEVELOPMENT STRATEGY, THE DISTRICT IS PROPOSING THE CREATION OF A NEW INTERNATIONAL DEVELOPMENT OFFICE WITHIN OBED. A TOTAL OF $250,000 IS INCLUDED IN THE FY 1986 REQUEST FOR THIS PURPOSE.

OUR LONG-TERM FISCAL HEALTH DEPENDS ON THE VIABILITY OF OUR LOCAL TAX BASE. FACED WITH CURRENTLY INSURMOUNTABLE LIMITS ON LOCAL TAXING AUTHORITY, WE MUST MOVE AGGRESSIVELY TO STIMULATE GROWTH AND NEW TAX BASE EXPANSION. I BELIEVE THAT THE DISTRICT'S PROPOSED INTERNATIONAL BUSINESS OFFICE WILL BE INTEGRAL TO THESE EFFORTS.

ALSO INCLUDED IN THE PROPOSED FY 1986 BUDGET ARE FUNDS TO SUPPORT AN ADDITIONAL 2,500 JOB TRAINING SLOTS. WE HAVE HAD PHENOMENAL SUCCESS WITH OUR

SUMMER YOUTH, JOB TRAINING AND "FIRST SOURCE" JOB REFERRAL PROGRAMS--THE RECENT ZAYRE DEPARTMENT STORE AT 4TH AND RHODE ISLAND AVENUE BEING THE MOST RECENT EXAMPLE. THE NEW FUNDS IN FY 1986 WILL ALLOW US TO FOCUS EVEN MORE ATTENTION ON IN-SCHOOL AND OUT-OF-SCHOOL YOUTH AND TO EXPAND CURRENT EFFORTS WITH THEIR SPECIAL INTERESTS IN MIND.

MENTAL HEALTH SYSTEM REORGANIZATION AND TRANSITION

I HAVE RECENTLY TRANSMITTED TO THE CONGRESS A DETAILED AND COMPREHENSIVE REPORT ON THE STATUS OF THE ST. ELIZABETHS HOSPITAL TRANSITION AND LOCAL MENTAL HEALTH CARE DELIVERY SYSTEM PLANNING. I AM PLEASED TO REPORT AT THE OUTSET THAT NO GAP REMAINS IN NEEDED HOSPITAL FUNDING BETWEEN THE PRESIDENT'S FISCAL YEAR 1986 PROPOSED BUDGET AND THE DISTRICT REQUEST BEFORE YOU TODAY. IN ADDITION TO ENSURING FULL FUNDING FOR THE HOSPITAL'S FY 1986 OPERATING BUDGET WE HAVE PROPOSED AN INCREASE OF $4.9 MILLION IN LOCAL MENTAL HEALTH CARE SERVICES AND PROGRAMS. THESE FUNDS WILL BE USED TO ENHANCE EXISTING MENTAL HEALTH SERVICES ADMINISTRATION (MHSA) PROGRAMS, TO COVER AN ESTIMATED $1.2 MILLION IN ADDITIONAL NURSING HOME COSTS FOR ST. ELIZABETHS OUTPLACEMENTS, AND TO COMPLEMENT THE DRUG ABUSE TREATMENT PROGRAMS PROPOSED IN ADASA.

THE DISTRICT'S FISCAL YEAR 1986 PAYMENT TO THE HOSPITAL WILL TOTAL $63 MILLION--$20.5 MILLION MORE THAN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES DIRECT, FY 1986 PAYMENT.

I AM ALSO PLEASED TO REPORT THAT THE COMPLEX AND FAR-REACHING TRANSITION PLANNING EFFORTS ARE MOVING AHEAD PRODUCTIVELY, ON SCHEDULE AND WITH DISPATCH. ALL LEGISLATIVELY MANDATED WORKING GROUPS (INCLUDING A LABOR/MANAGEMENT COMMITTEE) HAVE BEEN ESTABLISHED AND CONVENED. THE REQUIRED JANUARY 1, 1986 IMPLEMENTATION PLAN SUBMISSION DATE TO THE COUNCIL OF THE DISTRICT OF COLUMBIA WILL BE MET, AND THE APRIL 1, 1986 DATE FOR PLAN SUBMISSION TO CONGRESS ACHIEVED.

I KNOW THAT THE ISSUE OF ST. ELIZABETHS HOSPITAL HAS BEEN OF VERY SPECIAL CONCERN TO THIS COMMITTEE IN RECENT YEARS. I AM PLEASED THAT OUR MUTUALLY BOLD ACTION TO FIND A SOLUTION AND REALIZE ITS IMPLEMENTATION HAS LED US TO A POINT WHERE ADEQUATE FEDERAL AND LOCAL SUBSIDIES FOR THE HOSPITAL ARE NO LONGER AN ISSUE OF CONTROVERSY AND DEBATE.

THE DEVELOPMENT OF A MODEL MENTAL HEALTH CARE DELIVERY SYSTEM WHICH CAN BE EMULATED BY CITIES AND STATES THROUGHOUT THIS COUNTRY IS A CHALLENGE OF ENORMOUS MAGNITUDE. I AM CONFIDENT THAT WE ARE ON TRACK TO REALIZE THIS GOAL AND, THROUGH COOPERATION AND WITH THE CONTINUED SUPPORT OF THE CONGRESS, THAT WE WILL PROVIDE THOSE PERSONS NOW IN THE SYSTEM AND FUTURE CLIENTS WITH THE LEVEL AND QUALITY OF CARE THAT HAS SO LONG ELUDED THIS COMMUNITY BECAUSE OF THE FRAGMENTED AND UNCOORDINATED NATURE OF MENTAL HEALTH SERVICES.

HOUSING PROGRAMS AND SERVICES

THIS COMMUNITY AND THIS GOVERNMENT FACE NO MORE SERIOUS OR IMPORTANT CHALLENGE THAN THE NEED FOR AN ADEQUATE SUPPLY OF SAFE, DECENT AND AFFORDABLE HOUSING IN THE DISTRICT OF COLUMBIA. AT RISK OF BECOMING A CITY OF THE VERY RICH AND VERY POOR, THE NEED TO CAREFULLY CALIBRATE THE PROPER BALANCE BETWEEN THE INTERESTS OF PROPERTY OWNERS AND TENANTS, THE NEEDS OF LOW INCOME AND MODERATE INCOME RESIDENTS, THE NEEDS OF THE ELDERLY AND OTHERS ON LIMITED FIXED INCOME, AND THE ECONOMIC INTERESTS OF THE COMMUNITY AS A WHOLE IS AMONG THE MOST COMPLEX AND DIFFICULT OF THE PROBLEMS WE CURRENTLY FACE.

THE DISTRICT'S FISCAL YEAR 1986 BUDGET ADDRESSES THESE DIFFICULT PROBLEMS IN SEVERAL COMPLEMENTARY WAYS. FIRST, A $5,000,000 LOCAL RENT SUPPLEMENT PROGRAM--PATTERNED AFTER THE FEDERALLY FUNDED SECTION 8 RENTAL SUBSIDY--IS PROPOSED. ESTABLISHMENT OF A LOCAL RENT SUBSIDY PROGRAM HAS BEEN AUTHORIZED UNDER THE DISTRICT'S PREVIOUS RENT CONTROL LAW FOR A NUMBER OF YEARS, BUT TO DATE UNFUNDED. THE NEW RENT CONTROL LEGISLATION, PASSED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA LAST WEEK, CONTINUES THIS ENABLING PROVISION. IT IS OUR INTENT TO EXPAND THIS PROGRAM BEGINNING IN FY 1987 TO AT LEAST $15,000,000 ANNUALLY, IN ORDER TO GUARANTEE ON-GOING LOCAL RESOURCES TO ASSIST TENANTS THROUGHOUT THE DISTRICT.

IN ADDITION TO THE RENT SUPPLEMENT PROGRAM, THE BUDGET OF THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT INCLUDES A TOTAL OF $3,019,000 FOR THE CONTINUATION OF THE CITY-WIDE HOME PURCHASE ASSISTANCE PROGRAM (HPAP); $1,064,000 FOR THE WARD 8 SPECIAL TARGETED HOME PURCHASE ASSISTANCE PROGRAM; $2,464,000 FOR REHABILITATION FINANCING FOR LOW AND MODERATE INCOME HOMEOWNERS; $225,000 FOR A DEMONSTRATION MORTGAGE DEFAULT PREVENTION PROGRAM (TO TEMPORARILY ASSIST PERSONS AT RISK OF LOSING THEIR HOMES DUE TO EMERGENCY FISCAL CONSTRAINTS); AND $6,047,000 IN DISTRICT SUBSIDIES TO THE LOW RENT HOUSING FUND/PROPERTY MANAGEMENT ADMINISTRATION.

IN COMBINATION THESE PROGRAMS PROVIDE A WIDE RANGE OF INNOVATIVE EFFORTS TO STIMULATE HOME OWNERSHIP, SUBSIDIZE LOW INCOME AND MODERATE, FIXED INCOME TENANTS, PREVENT MORTGAGE DEFAULT AND HOMELESSNESS AS A RESULT OF TEMPORARY FAMILY FINANCIAL CRISIS, AND ENSURE THAT AREAS OF THE CITY IN GREATEST NEED--IN PARTICULAR THE NEIGHBORHOODS EAST OF THE ANACOSTIA RIVER--RECEIVE SPECIAL AND PRIORITY ATTENTION.

IN COMBINATION WITH PROPOSED NEW CAPITAL AUTHORITY FOR HOUSING PROGRAMS OF $20 MILLION, AND PROJECTED FY 1986 CAPITAL EXPENDITURES FOR CURRENTLY AUTHORIZED AND NEWLY PROPOSED CAPITAL PROJECTS OF $24.3 MILLION, FY 1986 BUDGET REPRESENTS OUR MOST AMBITIOUS PROGRAM TO DATE IN THE AREA OF HOUSING ASSISTANCE, MAINTENANCE AND PRODUCTION. I AM CONFIDENT THAT, WITH THE EXCELLENT NEW LEADERSHIP AT THE DEPARTMENT, THE OVERSIGHT OF MY DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT AND MY OWN AND THE COUNCIL'S INCREASING PERSONAL TIME COMMITMENT TO THE PROBLEMS OF HOUSING IN THIS COMMUNITY, THESE PLANS CAN BE ACCOMPLISHED AND SIGNIFICANT PROGRESS MADE IN THE COMING EIGHTEEN MONTHS.

PUBLIC SAFETY

IN THE AREA OF PUBLIC SAFETY THE FY 1986 BUDGET REFLECTS OUR COMMITMENT TO FULL FUNDING OF THE BASE NEEDS OF THE DISTRICT'S POLICE, FIRE, CORRECTIONS AND COURT AGENCIES.

THE BUDGETS OF THE FIRE DEPARTMENT AND POLICE DEPARTMENT PROVIDE FULL FUNDING FOR THE ANTICIPATED FY 1986 PAY INCREASES--AVOIDING THE NECESSITY TO ABSORB A PORTION OF THESE COSTS THROUGH DEFERRALS OF EQUIPMENT AND SUPPLY PURCHASE OR ELIMINATION OF OTHER NON-LABOR EXPENDITURES.

THE PROPOSED BUDGET FOR THE FIRE DEPARTMENT INCLUDES FUNDING FOR ADDITIONAL AMBULANCE AND EMERGENCY LIFE SUPPORT VEHICLES, AS WELL AS THE FUNDS NECESSARY TO MEET THE CONDITIONS OF THE RECENTLY COMPLETED THREE-YEAR COLLECTIVE BARGAINING AGREEMENT. ELIMINATION OF THE SIGNIFICANT OVERTIME COSTS INCURRED AS A RESULT OF DELAYS IN ACCEPTANCE OF THE DISTRICT'S AFFIRMATIVE ACTION PLAN FOR FIRE RECRUITMENT AND PROMOTION IS ASSUMED IN THE FY 1986 BUDGET. WE ARE CONFIDENT THAT REMAINING ISSUES CAN BE RESOLVED PRIOR TO THE START OF FISCAL

YEAR 1986. HIRING IS CURRENTLY UNDERWAY AND WE HOPE TO HAVE THE MAJORITY OF VACANCIES FILLED BY THE END OF THIS FISCAL YEAR.

THE BUDGET FOR THE DEPARTMENT OF CORRECTIONS FUNDS THE COSTS OF THE NINE DETENTION AND CORRECTIONAL FACILITIES CURRENTLY OPERATED BY THE DISTRICT OF COLUMBIA. IN THE PAST FOUR YEARS, WE HAVE ADDED MORE THAN 1,800 BEDS TO OUR TOTAL PRISON CAPACITY. THE BUDGET OF THE DEPARTMENT OF CORRECTIONS HAS RISEN FROM $52 MILLION IN FY 1979, TO A PROPOSED $127 MILLION IN FY 1986--AN INCREASE OF 144 PERCENT IN JUST SEVEN YEARS. THIS REPRESENTS THE FASTEST GROWING SINGLE OPERATING AGENCY IN OUR BUDGET.

AS I KNOW YOU ARE AWARE THERE HAS BEEN A GREAT DEAL OF DISCUSSION IN RECENT MONTHS ABOUT THE NEED FOR ADDITIONAL CORRECTIONAL FACILITIES AND EVEN LARGER GROWTH IN OPERATING EXPENDITURES. I HAVE AGREED IN PRINCIPLE TO THE CONSTRUCTION OF A NEW FACILITY ON FEDERAL PROPERTY WITH FEDERAL FUNDS AND I WILL BE ESTABLISHING A COMMISSION, IN COOPERATION WITH THE COUNCIL OF THE DISTRICT OF COLUMBIA TO AID IN DECISIONS ABOUT THE APPROPRIATE LOCATION OF SUCH A FACILITY. I INTEND TO WORK WITH THE CONGRESS AS WELL AS THE FEDERAL EXECUTIVE BRANCH CLOSELY ON THIS ISSUE AND WILL KEEP YOU INFORMED AS WE MOVE FORWARD.

LET ME NOTE THAT THE PROPOSED BUDGET BEFORE YOU DOES NOT INCLUDE FUNDS FOR THE CONTINUATION OF THE EDUCATION AND VOCATIONAL PROGRAMS AT THE LORTON FACILITY THAT HAVE BEEN IMPLEMENTED WITH SPECIAL FEDERAL CONTRIBUTIONS. WE HAVE ALREADY TESTIFIED BEFORE YOUR COMMITTEE ABOUT THE ADDITIONAL FEDERAL CONTRIBUTIONS WE ARE SEEKING FOR FISCAL YEAR 1986 AND WE LOOK FORWARD TO WORKING WITH YOUR COMMITTEE TO IDENTIFY THE NEEDED RESOURCES.

TIME PREVENTS MY DISCUSSING IN DETAIL ALL OTHER SPECIAL INITIATIVES INCLUDED IN THE FY 1986 PROPOSED BUDGET. AS YOU CONDUCT YOUR REVIEW I WOULD ASK THAT YOU PAY SPECIAL ATTENTION TO THE NEW PROGRAMS PROPOSED FOR SENIOR CITIZEN HEALTH SERVICES, RESPITE CARE AND JOB OUTREACH; TO THE PROPOSED ADDITIONAL FUNDING FOR DAY CARE AND FOSTER CARE SERVICES IN OUR DEPARTMENT OF HUMAN SERVICES; TO THE EXTENSIVE RESOURCES PROVIDED FOR EXPANDED STREET AND CURB REPAIR BY THE DEPARTMENT OF PUBLIC WORKS (IN ADDITION TO A MINI-SUPERCAN PROGRAM AND IMPROVED STREET SIGN INITIATIVE); AND TO NEW AND EXCITING PLANS FOR THE AUTOMATION OF REGULATORY AND ENFORCEMENT FUNCTIONS IN THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, AND FOR A MAJOR INSTITUTIONS ARTS PROGRAM.

THE FISCAL OUTLOOK FOR WMATA OPERATING SUBSIDIES AND FOR METRO CONSTRUCTION ARE DISCUSSED IN SOME DETAIL IN OUR OPERATING BUDGET; AS ARE OTHER SPECIAL ISSUES CONCERNING THE DISTRICT'S WORKFORCE AND ATTRITION; THE PROBLEMS OF HOMELESSNESS, INDIGENT HEALTH CARE AND MENTAL HEALTH SERVICES.
I COMMEND THESE ANALYSES TO YOUR ATTENTION AND I BELIEVE THAT YOU WILL FIND THEM AS HELPFUL AS I HAVE IN CONSIDERING THE MERITS OF OUR VARIOUS INITIATIVES.

* * * *

I AM GLAD TO BE ABLE TO SHARE WITH YOU THIS GENERALLY POSITIVE VIEW OF THE STATE OF DISTRICT FINANCES AND OUR IMMEDIATE FISCAL FUTURE. I MUST, HOWEVER, TEMPER THIS GOOD NEWS WITH TWO NOTES OF CAUTION.

FIRST, THE PRESIDENT'S PROPOSED FY 1986 BUDGET DID NOT INCLUDE ANY INCREASE IN THE DISTRICT OF COLUMBIA'S FEDERAL PAYMENT. WHILE SLIGHTLY IMPROVED REVENUE FORECASTS MAKE THIS OMISSION SOMEWHAT MORE TOLERABLE THAN WOULD OTHERWISE BE THE CASE, I MUST EXPRESS MY DISAPPOINTMENT AND CONCERN ABOUT THE FAILURE--FOR THE FIRST TIME SINCE I BECAME MAYOR--TO SUPPORT AN ADDITIONAL PAYMENT. THIS

PROPOSED FREEZE CONFIRMS MANY OF THE FINANCIAL COMMUNITY'S WORST FEARS ABOUT THE ARBITRARINESS OF THIS CRITICAL SOURCE OF DISTRICT FINANCING. ENACTMENT OF A FORMULA-BASED FEDERAL PAYMENT IS CRITICAL IN THIS CONGRESS IN ORDER TO ELIMINATE THE ARBITRAINESS OF THE CURRENT PROCESS FOR SETTING THE PAYMENT LEVEL.

WE PROPOSED MORE THAN TWO YEARS AGO A FORMULA THAT WOULD SET THE PAYMENT AT 35 PERCENT OF THE SECOND PRECEDING YEAR'S AUDITED LOCAL TAX REVENUE. THOUGH THE PRESIDENT'S FISCAL YEAR 1985 BUDGET STATED SUPPORT IN PRINCIPLE FOR A FORMULA PAYMENT, NO OFFICIAL COMMUNICATION OR RESPONSE HAS YET BEEN RECEIVED FROM THE ADMINISTRATION ON OUR PROPOSED FORMULA.

IN LIGHT OF THE ADMINISTRATION'S APPARENT RELUCTANCE TO MOVE FORWARD ON THIS ISSUES, OUR OUTSTANDING DELEGATE TO THIS CONGRESS, THE REV. WALTER FAUNTROY, HAS INTRODUCED A BILL TO ESTABLISH A FORMULA FEDERAL PAYMENT FOR THE DISTRICT IN ADDITION TO OTHER PROVISIONS. WHILE WE CONTINUE TO SUPPORT 9AND THE NEW LEGISLATION PROPOSES) A LINK TO OUR LOCAL TAX EFFORT WE ARE WILLING TO WORK WITH THE CONGRESS ON THE DEVELOPMENT OF A MUTUALLY ACCEPTABLE AND REASONABLE ALTERNATIVE FORMULA. I HOPE THAT THIS COMMITTEE WILL WORK WITH US ON THIS INITIATIVE AND I LOOK FORWARD TO YOUR INVOLVEMENT AND INTEREST.

THE SECOND CAUTION I MUST VOICE INVOLVES THE POTENTIALLY NEGATIVE IMPACT OF FEDERAL BUDGET DECISIONS ON THE DISTRICT OF COLUMBIA IN FY 1986 AND FUTURE YEARS. WE ESTIMATE THAT THE ADOPTION OF THE SENATE BUDGET RESOLUTION WOULD COST THE DISTRICT A MINIMUM OF $52.7 MILLION IN FY 1986--PRIMARILY IN MASS TRANSIT OPERATING AND CAPITAL ASSISTANCE, COMMUNITY DEVELOPMENT BLOCK GRANTS, EMPLOYMENT TRAINING AND OTHER HUMAN SERVICES PROGRAMS. AN ADDITIONAL $69.3 MILLION WOULD BE REQUIRED IN DISTRICT GOVERNMENT EMPLOYER CONTRIBUTIONS TO THE FEDERAL CIVIL SERVICE RETIREMENT SYSTEM IF THE PROPOSED CHANGES INCORPORATED IN THE SENATE BUDGET RESOLUTION ARE ADOPTED BY THIS CONGRESS. IN COMBINATION, THE FISCAL IMPACT REPRESENTS NEARLY 5.3 PERCENT OF THE DISTRICT'S TOTAL, PROPOSED FY 1986 BUDGET--A PROBLEM MADE ALL THE WORSE BY THE PRESIDENT'S FAILURE TO RECOMMEND ANY INCREASE IN THE DISTRICT'S FY 1986 FEDERAL PAYMENT.

AS PRESIDENT OF THE NATIONAL CONFERENCE OF BLACK MAYORS I HAVE VOICED MY CONCERNS ABOUT THE DAMAGING DOMESTIC PROGRAM CUTS SUPPORTED BY THIS ADMINISTRATION. I AM EQUALLY CONCERNED ABOUT THE POTENTIAL CONSEQUENCES FOR THE DISTRICT OF COLUMBIA AND I INTEND TO CONTINUE TO WORK ACTIVELY WITH MANY OF YOU AS THE FEDERAL BUDGET DEBATE PROCEEDS TO ENSURE THAT THE ADVERSE IMPACT ON THE DISTRICT OF COLUMBIA AND HER CITIZENS IS MINIMIZED.

IN SUMMARY, LET ME SAY THAT I AM PROUD OF THE DISTRICT'S OUTSTANDING RECORD OF FINANCIAL ACCOMPLISHMENT AND DELIGHTED TO BE BEFORE YOU TODAY WITH MORE GOOD NEWS THAN BAD ABOUT OUR FISCAL FUTURE.

WE ARE AT A CRITICAL JUNCTURE FOR LEADERSHIP, PEOPLE AND PROGRESS IN THIS COMMUNITY. IN SETTING COURSE FOR HOME RULE'S SECOND DECADE WE MUST RESOLVE THE OUTSTANDING ISSUES OF FEDERAL-LOCAL FISCAL RELATIONS AND MOVE FORWARD TOGETHER TO EVEN MORE RESPONSIBLE FINANCIAL MANAGEMENT.

WE MUST RETAIN OUR BELIEF THAT SOCIAL RESPONSIBILITY AND FISCAL RESPONSIBILITY ARE NOT INCOMPATIBLE AND WE MUST KEEP OUR VISION FIRMLY FOCUSED ON THE NEED FOR ECONOMIC GROWTH AND JOB CREATION IN THE DISTRICT OF COLUMBIA. I BELIEVE THAT OUR PROPOSED FISCAL YEAR 1986 BUDGET SETS THE AGENDA FOR ACHIEVEMENT OF THESE GOALS AND I HAVE APPRECIATED THE OPPORTUNITY TO SHARE IT WITH YOU TODAY.

MR. CHAIRMAN, I WOULD BE HAPPY TO ANSWER ANY QUESTIONS THAT YOU OR YOUR COLLEAGUES MIGHT HAVE AT THIS TIME.

ACCOMPLISHMENTS OF DISTRICT GOVERNMENT

Mayor BARRY. Let me summarize, Mr. Chairman.

The subcommittee, the Council, and I take our jobs very, very seriously in trying to put a budget together that reflects the priorities and issues of the executive branch and the legislative branch of the District government.

We were fortunate, Mr. Chairman, to have worked with a Council that has been one of balance and has good direction. In the last 3 to 4 years, I have not had to veto any item in the budget. We worked them out, and the budget reflects the District's philosophy and priorities.

One of those philosophies, Mr. Chairman, is fiscal responsibility. As you know, when I came to office, our books had not been audited. We did not know where our money was. We have had 4 consecutive years of balanced budgets. The general fund deficit has been reduced by over $110 million in those 4 years by internal reprogramming and tightening our belts.

We have also successfully entered the short-term bond market this year, borrowing $150 million. We received the highest bond ratings from Moody's and Standard and Poor's. We also entered the long-term bond market this year for the first time. About a month ago, we marketed $167 million of bonds at a rate of 9.8 percent which was a fairly favorable rate compared to the Treasury rate, had we been borrowing from the U.S. Treasury. We just feel very good about our financial affairs and our ability to keep track of our moneys. We still have some distance to go in some of the things that have bothered us. We ought to continue to look at a formula-based Federal payment, which in my view, is necessary. We should not have to continue to make decisions based on who is at OMB and who can be most persuasive in saying what our Federal payment ought to be. That certainly is not the way it should be done.

Congressman Fauntroy introduced the formula-based Federal payment legislation in the House, and we intend to move with the same introduction in the Senate.

Mr. Chairman, we continue to look at the budget process, as you know. Our view is, Congress should not be involved in our budget. On the other hand, as long as you are, I certainly think it ought to be the kind of overview that this committee does.

FORMULA-BASED FEDERAL PAYMENT

Senator SPECTER. There I did not quite follow you. You were referring to Congressman Fauntroy has introduced a formula-based Federal payment which would be automatic?

Mayor BARRY. It would be based on some percentage of our local revenues. It would be automatically authorized and appropriated based on the previous years' revenues that are certified by the Treasury, which means that the Federal payment would not be——

Senator SPECTER. Then we would be precluded from any special allocations for improving the corrections system?

Mayor BARRY. No; you would not be.

Senator SPECTER. You could add on money, not be limited by the ceiling?

Mayor BARRY. Yes; Mr. Chairman, what you have done in the past is add Federal funding above and beyond the authorized Federal payment level. The Congress has the authority, as you know, to add money to the budget above the budget level.

Senator SPECTER. It might be a legal process of the law for the rest of the country if we are going to go to a formula on Washington, and we intend to make more of an allocation than we formerly did.

Mayor BARRY. What was that again?

Senator SPECTER. It might be a denial of due process of law and equal protection of law for the rest of the country. That is what David Stockman says now about our allocations.

Mayor BARRY. Mr. Chairman, I have not discussed Mr. Stockman's support of the idea of a formula-based Federal payment. I think he supports some flexibility on the part of the committee chair as long as——

Senator SPECTER. He supports flexibility in reduction. He does not support flexibility in addition.

Senator LAUTENBERG. I can vouch for that.

Senator SPECTER. I interrupted you for a moment. I think Washington, DC has done well, at least currently, without a formula which is something I think should be considered in terms of giving greater authority on home rule. I understand your point.

Mayor BARRY. The reason I raised that, Mr. Chairman, is each year, including this year, I have to go to OMB and negotiate an increase in the Federal payment. We start with a number that is higher than what we end up with. Mr. Stockman starts with a number lower than I start with. We sit there and negotiate and come to a number. I am not sure that is the way to do business. It is not predictable. We cannot plan on it in developing our budget.

For instance, this year they indicated to us very early they were not going to support an increase in the Federal payment beyond the present 1985 level. I spent a lot of time talking to people at OMB, including Mr. Stockman, and the White House, and I was convinced they were not going to change their minds. So I decided to go another route. But, again, this is a direction that we in the District feel will not do anything to limit the prerogatives of this committee to add additional money for other initiatives. We appreciate the need to have flexibility, and to take on special initiatives as the education programs in the corrections system.

NATURAL GROWTH IN THE FISCAL YEAR 1986 REVENUE BASE

Let me also say, Mr. Chairman, the fiscal year 1986 budget you have before you reflects one of the most favorable natural revenue growths in 6 years. We feel very good that we are able to have an increase in the local tax base of $159 million from natural revenue sources without any change in the tax rates. Most of this growth has come from sales taxes and income taxes, again reflecting the upward swing of the economy in the District of Columbia and also reflecting our efforts to attract major businesses and development in Washington.

As you travel throughout our city, you see development everywhere. Some people think they are not the best, but at least downtown is an area that we are very proud of and there is very little controversy as to development there.

Mr. Chairman, we are looking at the President's tax reform——

Senator SPECTER. Mayor, could you move that mike a little bit away from you? My hearing is pretty good.

Mayor BARRY. I am sorry. Is that better?

Senator SPECTER. It is not your problem. It is mine. You have got a wonderful voice, but I am not hearing all the words. I thank you.

Mayor BARRY. Thank you very much.

ANALYZING THE IMPACT OF THE PRESIDENT'S PROPOSED TAX REFORMS

Senator, Mr. Chairman, members of the committee, we are looking at the President's proposed tax reforms on the District of Columbia. We have not yet finished with the analysis. We do not know how it is going to affect our tax revenues.

One part of that tax proposal which we have some great concern about, in fact, opposition to, is the lack of the ability of taxpayers who pay Federal income taxes to deduct local taxes from their Federal income taxes. We think that goes against the whole area of federalism, and the whole area of how the States and the Federal Government came together. We are analyzing both the short-term and long-term impact of that on the District of Columbia. We will get back to you after we are finished with the analysis as to how it may affect us in 1986 because, as you know, Mr. Chairman, the proposal would go into effect, if it is passed this year, calendar year 1986, which would affect our income for fiscal year 1986, at least 9 months of it.

PROGRAMMATIC THRUSTS IN THE FISCAL YEAR 1986 BUDGET

Also, Mr. Chairman, we are looking at some program thrusts that we hope will be accepted by this committee. A total of $5.8 million is requested for additional drug treatment funds for heroin and and PCP detoxification, DHS/school prevention and education programs, enhanced community services for PCP, and other polydrug users.

Mr. Chairman, as in some other cities, we are facing a drug epidemic here in Washington.

Senator SPECTER. Mr. Mayor, we are very sympathetic to that. We have had a special hearing on it, and I think more needs to be done, and we will be weighing that very carefully. So there is one adjacent consideration which this might be as good a time as any to approach, and that is the subject of job training. If you get the young people into the work cycle, you get them out of the drug cycle. And I have been interested in the media reports this morning about your efforts to place young people in jobs around the area.

JOB TRAINING PROGRAMS

As you and I have discussed before, I am very much interested in job training, on which we might bring some special resources to bear in Washington DC as a model city. This is a problem of nationwide importance. We have had the Job Training Partnership Act. There are very substantial Federal funds available, and I would like to see, and I know you have talked about this, a special effort made. You do not have the same kind of consideration, say, that Pittsburgh does on retraining of steelworkers, but on the whole issue of summer jobs for disadvantaged youth, black youth, this whole issue of job training, I am very much interested in what you anticipate, and I believe the subcommittee will be very interested in working with you in making that a highlight of the fiscal year 1986 budget.

I know too from the media reports that you have taken a position in favor of the subminimum wage which is a highly controversial issue, that you are very deeply involved in heavy waters politically, which is something Congress is going to be considering, and I would be interested if you would comment about those subjects starting with the subminimum wage and then moving to what you might anticipate by way of model programs perhaps on job training.

Mayor BARRY. Mr. Chairman, in terms of my position on the Youth Opportunity Act, I came to that position first as president of the National Conference of Black Mayors which represents some 290 black mayors in America. At our annual convention in September of last year, I was a member of the board of directors before I was elected president, the majority of the mayors came to the conclusion that they were facing catastrophic unemployment in their cities: Gary, IN, 65 percent of the young people between 18 and 25 out of work; Newark, 55 percent; New Orleans, 45 percent; and the District, 43 percent. We supported increased funding for the Job Training Partnership Act which supported Senator Kennedy's efforts and other efforts to increase funding for job training year around.

VIEWS ON SUBMINIMUM WAGE

Senator SPECTER. What do you think, Mr. Mayor, of the objection raised by some that it will be foot in the door for lowering the minimum wage and that if you have the subminimum wage, it will displace family wage earners with the substitutes and the ultimate effect would be very retrogressive?

Mayor BARRY. Mr. Chairman, I do not think the facts in the analysis speak to what may happen. The Youth Opportunity Act is experimental. It runs from May 1 to September 30, and has a $10,000 penalty for those who would displace adults for young people. But, more importantly, Mr. Chairman, in most States, in fact all States, the unemployment compensation rates, that is the rates you pay into the unemployment compensation fund are a factor in your turnover. The higher your turnover is, the higher your rate, and I am not sure that employers are going to risk their overall unemployment compensation rate going up just to displace an adult worker for the summer. Moreover, this program is from May 1 to September 30. At the end of September 30, the same employer has to go back to the $3.35 minimum wage. Let me say $3.35 an hour is really not enough to live on if you are an adult. If you multiply that out, it is not really a livable wage.

Mr. Chairman, what I am concerned about is that we are producing a generation of young people who are now 24 and 25 years of age who have never held a job in their lives.

THE DISTRICT AS A MODEL JOB TRAINING PROGRAM

Senator SPECTER. Mr. Mayor, on that subject, what can we do? What could be done by the District of Columbia, Washington, DC, in terms of a prototype which might be a national prototype for job training?

Are you able to work with the Federal funding agencies on the Job Training Partnership Act, or how much funding are you getting? What kinds of programs are available? To what extent could this subcommittee be helpful to you to carry out those broad objectives?

COMMITMENT FOR THE 1985 SUMMER JOBS PROGRAM

Mayor BARRY. Mr. Chairman, we have been fortunate in the District of Columbia with your support and the support of former chairs of this committee. I am now able to, this summer, promise, commit, and deliver a commitment where every young person in Washington who registers in the Summer Job Program, between the ages of 14 and 21, will get a job. Not just a make-work job but a meaningful job. We have some 24,000 people registered now, and probably about 24,000 jobs already identified.

Senator SPECTER. What is the total unemployment in that group, Mr. Mayor? Is that the total unemployment?

Mayor BARRY. That is all we can find. There are some others out there who have not registered.

Senator SPECTER. But they have not signed up.

Mayor BARRY. We have been beating the bushes. I have reopened registration three times already. We sent out a special mailing to all the ADC recipients.

Senator SPECTER. You believe you can find jobs for all these people?

Mayor BARRY. We have already identified them.

Senator LAUTENBERG. Just to understand what is being said, 24,000 have signed up?

Mayor BARRY. Yes.

Senator LAUTENBERG. But can we assume, also based on the research that you have done, that this is the total number of young people out there who are unemployed? You are saying everybody has signed up who is unemployed at this point?

Mayor BARRY. No.

Senator LAUTENBERG. I think that was the chairman's question.

While we are on this——

Senator SPECTER. Let me just ask two more questions and then I will yield to you because we are running a little bit long.

PROGRESS MADE ON PAROLE ISSUES

Mr. Mayor, the questions I want to ask on this issue, and Senator Lautenberg will pick up, turn on prisons and the Parole Board, and I compliment you on the progress that has been made on the Parole Board, the new chairman. We have new rules for determining standards for release and also for revocation, and I think those are very significant to public safety in the city. I thank you for your cooperation. And we had a very extensive hearing last week on the progress which is being made in the prisons, and I think you are on the right track and I would adopt your articulation that much remains to be done. It is going to require a tremendous amount of push, which I think is coming from you personally and from your administration, and I compliment you for that.

PROGRESS ON BUILDING NEW PRISON

The one question that I have some concern about is the speed on proceeding with the proposals to construct a new prison, and that is going to be a difficult course. We have a lot of obstacles on that. It is going to be a significant Federal involvement. We have yet to work out the details with the Department of Justice and the Office of Management and Budget, and my question turns on the timetable which you anticipate.

I know that you had initially projected that there would be a study commission established during the month of April to be composed of professional architects, planners, and prison representatives. That has not come into fruition because there has been an issue, as I understand it, on the role vis-a-vis the Mayor's authority versus City Council. And, of course, Mr. Clarke is here to speak to that as well, but I would be very interested to know what your projections are and see if you cannot establish a timetable which will move this ahead so that this subcommittee and I specifically can be of assistance to you.

We are in the 99th Congress now. Senator Lautenberg will be in the 100th Congress. I hope to be in the 100th Congress. But this is a matter which we would like to see moved ahead and we are going to have difficulties in an assessment as to how big the institution ought to be, very complex questions about crime projections. We know what we have now, what the crime rate is now. It is hard to project a decade or 25 years in the future. Costs are going to be difficult, and I am very anxious to see a rigid timetable, a tight timetable established that we can meet and work together in partnership on, which you discussed, the partnership of Congress, the Council and the Mayor.

SUMMER AND YEAR-ROUND JOBS

Mayor BARRY. Mr. Chairman, let me say one thing about our jobs program that I think is unique. This summer we will be spending about $6 million of our local dollars to pay the wages of the youth in the jobs program along with some administrative costs. When you add this to the funding from the Federal Government and the private sector, we will be able to serve 24,000 young people.

Our big problem is year-round jobs. We do not have enough jobs. We also have to get people trained and retrained in order to put them to work year round. These are both adults and those between 18 and 21 years of age. I think we have to work on this and we would like some support on how to get that done.

A solution in that area depends more on the private sector than the public sector. Five out of every six jobs are in the private sector. And in Washington it is 6 out of every 10 jobs. We have to get the Federal Government to hire the disadvantaged, and to hire more people who come out of our educational programs and prison programs. We also have to get the private sector to do more. I am not at all happy with the level of participation of the private sector. It has gotten better. We have been meeting with them and pushing and pulling, but it has not reached the level I think it ought to.

So I think jobs and job training are very related to drug addiction and substance abuse. Lorton, the Parole Board, the courts are all affected by drug addiction. I think if we had more people working, we would cut down significantly on the prison population. So my goal is to work with you and others, not only to get summer jobs for these young people but try to find a way to increase the number of year-round jobs for citizens who need to work.

Now, of course, there are some who, regardless of what you do, you will not be able to get them to work. They are in the very, very small minority. I am convinced the great majority of people in this town, if given an opportunity to work, will work. I wanted to make that clear.

STATUS OF BUILDING A NEW PRISON

Back to the prison situation. My understanding is that the Council passed a bill to establish a Prison Commission this morning. I should get it hopefully tomorrow and move ahead.

Because I did not know if the Council was going to move on the bill since they took it off the agenda 2 weeks ago, I established one by Mayor's order. It is the same design as that of the Council. We have moved immediately to establish the 15-person Commission.

Senator SPECTER. When do you expect to make those appointments?

Mayor BARRY. I am ready to go this week.

Senator SPECTER. Good.

Mayor BARRY. I am having a difficult time finding a chairperson, but I will find someone to take the heat. It is one of the most controversial appointments I have to make, because that person will be the focal point for all the community outrage.

Senator SPECTER. But you expect to get a chairman or chairwoman this week too?

Mayor BARRY. I am working hard at it.

Senator SPECTER. Fine.

Mayor BARRY. And then we are on a very tight timeframe. The Department of Corrections already has done some studies as to some possible characteristics of a prison in the District of Columbia.

SITE SELECTION FOR THE PRISON

Senator SPECTER. What about site selection, Mr. Mayor? When will we get to that?

Mayor BARRY. That is part of the study. We are looking at all the Federal land in the District of Columbia, trying to find out what the projected use is. We have also talked with the people at the National Capital Planning Commission, which plans all the Federal use of land in this area, in order to find out what the projected use of this land may be for the future.

Senator SPECTER. Initially you had anticipated that the Commission would report on a series of subjects by June 30. Then the Commission would report on the viable alternative sites by August 31.

Do you think we will be able to maintain the schedule?

Mayor BARRY. I think that schedule is slipping some, Senator.

Senator SPECTER. As to the site selection, I would hope that that is the one item which we might maintain that date on because I believe we are going to have lots of controversy on that. The sooner the possible site selections come into play so we can have it out, I think the better off we will be. The rest will roll in place much easier.

I would urge you, Mr. Mayor, and all those involved to really adhere to that date so that when we come back after Labor Day, we can get on with that.

Mayor BARRY. Mr. Chairman, we are doing all we can to produce some analysis of where the growth has occurred in the last 4 or 5 years in our prison population. There are the categories of prisoners. There are the extremely violent who need to be in maximum security. There are the misdemeanants who should be in medium security or the District jail. I think that may determine the site.

This community is no different than any other community. A lot of people want people in prison and locked up, but nobody wants a prison in their neighborhood, even on Federal land.

Senator SPECTER. That is a good point for me to yield to Senator Lautenberg on, because I think I mentioned at an earlier hearing in 1965 there was authorization in the Commonwealth of Pennsylvania for the construction of a new prison in eastern Pennsylvania. We had the Eastern State Pentitentiary which was constructed about 1812. It was a very, very famous prison, and the word penitentiary came from the Quaker approach of penitence being in solitary. And when the legislation was enacted in 1965 and funded, there was total disarray in locating a site. Finally Mount Gretna, about 90 miles away, was willing to undertake to have it as a job placement, to provide some economic stimulus to the community. Finally that could not be done because it was too far from all the professionals. The only place we could agree to build the prison for eastern Pennsylvania was in New Jersey.

Senator LAUTENBERG. I knew that was coming.

Senator SPECTER. I yield to you, Senator.

Senator LAUTENBERG. The chairman is very kind to make that offer, and we in New Jersey have decided not to continue to accept some of the solid waste material that has been exported to our State.

Senator SPECTER. Or any Pennsylvanians going to Atlantic City.

INTEREST IN LAW ENFORCEMENT

Senator LAUTENBERG. No; we are going to build a railroad to make it easier for people from Philadelphia and from Washington to enjoy our resort cities and Atlantic City. We are trying to cooperate and we are interested in the development of the region generally, including maintaining Amtrak, and those things are generally good for Washington and Philadelphia and New Jersey and New York. So we have a reasonable task which the chairman and I share amicably together.

On the question of prisons, law enforcement, justice and so forth, the chairman has a special training and a special interest in that, and I listen attentively and learn a lot as we go through some of these hearings. My interest, of course, is in the protection of our society, protection of our citizens wherever, but I like, if possible, to anticipate my problems. My background is business, not law, and my background is training, my background is technology, my background is employment. So I hope that as you search, Mr. Mayor and Chairman Clarke, for something unique in your city, something that says we can solve these problems and throughout America, we are going to demonstrate in Washington that we can take on part of that task.

INTEREST IN JOBS PROGRAM

We turn to the job sector and we turn, as you have, Mr. Mayor, to the private segment in trying to solve some of the problems.

I want to get back to a couple of statements that you made earlier on and that is you had 24,000 young people signed up for jobs. Am I correct in that first?

Mayor BARRY. Yes.

Senator LAUTENBERG. And you said the city was willing to commit $6 million to this program, that it was supported, if I understood correctly, by a like sum of $6 million from the Federal side and that you were working hard at trying to get the private sector to pony up and come along. And I agree with that.

DURATION OF SUMMER PORGRAM

The problem that I have is if you employ 24,000, how many weeks would this program be?

Mayor BARRY. Seven weeks.

Senator LAUTENBERG. Full-time employment?

Mayor BARRY. It varies from 20 hours to 40 hours depending on the job site and the contract we have with the nonprofit organization or with the private sector.

Senator LAUTENBERG. It would be prevailing minimum wage?

Mayor BARRY. It would be $3.35.

Senator LAUTENBERG. Because the least that it can cost you if everybody worked only 20 hours a week is substantially over a million and a half a week or something like that, and that is if everybody was not working 40 hours. If they work 40 hours, you are looking at costs of perhaps $3 million a week to keep this program going. I am just curious as to how you can get that job done unless the private sector comes in for a much larger share than seems to be in the offing right now. I hope certainly that you can do it.

My concerns again are in terms of training and safe environment for your students. I am very active in a bill to develop a computer literacy level throughout school systems in the country and, of course, that includes the District. I also am interested in removal of health hazards from our school buildings, and that is asbestos in particular, where New Jersey has had its share as have many of the older States or communities in the country. Asbestos was a common material used for insulation, and we hope that we are going to be able to get your support and develop any statistics that are needed to try and move those programs along.

RAISING THE DRINKING AGE IN THE DISTRICT

In terms of my interest in safety in the schools, health protection, I also include the safety of young people who come into the District and are served alcohol at ages less than 21. I will just take a minute in case anybody here was not aware that on June 26, 1984, the Senate passed legislation which requires that each State and the District of Columbia raise its minimum age for purchase and public possession of alcoholic beverages to 21 or face the loss of Federal highway funds. That legislation was signed into law by the President on July 17 of last year. I was the author of that provision in the Senate. Senator Specter was a strong proponent of the 21-year-old uniform drinking age as well. His State, Pennsylvania, and mine border on New York which has a lower age. Both of us are acutely aware of the problem that this causes when young people drive into New York State, purchase and consume alcohol and try to come home. Many times they do not make it, or if they do make it, sometimes they do not make it in the same strong physical condition that they did have before they left.

The same border problem exists here in Washington. Maryland passed the 21 minimum in 1982. Virginia just adopted 21 as its age. And that leaves the District where we are still waiting for something to happen.

In December 1984, the Metropolitan Washington Council of Governments passed a resolution urging all regional governments to implement the recommendations of the President's Commission on Drunk Driving, including the uniform regional minimum drinking age of 21. May 8 of this year, the Council of Governments again passed a specific resolution calling on the District to join Maryland and Virginia in making 21 the minimum drinking age, and I know that those States must feel about the District as we in New Jersey and Pennsylvania do about New York.

The Washington Regional Alcohol Program reported in 1984 that alcohol-related traffic deaths dropped by 13 percent in this region, and that is the good news. The bad news is that alcohol-related fatalities caused by under 21 age drivers increased by 18 percent. The Department of Defense has adopted a policy to conform the drinking age on military installations to the age prevailing in those States where the installations are located, and the recent Washington Post story indicated where the Pentagon was seeking an exemption to this policy in the Washington, DC area because of the 18-year-old drinking age for beer and wine in the District. The military claims if soldiers cannot drink on the base in this area, they will drive into the District with its 18-year-old minimum and then endanger themselves and perhaps others as they try to make it back to the base.

In the effort to achieve a national uniform minimum drinking age of 21, there are certain bellwether jurisdictions. New York is one of them and, of course, the District is another one.

Mayor Barry, what actions have you taken to advance the cause of achieving that minimum drinking age of 21 in the District of Columbia, may I ask?

Mayor BARRY. Senator, from the executive branch's point of view, we have been wrestling with this in my administration. I have very mixed feelings myself frankly.

Senator LAUTENBERG. Can I ask you, please, to just describe, so I am better informed, what the mix of feeling is?

Mayor BARRY. I am very sensitive to the fact that Washington has an 18-year-old beer and wine drinking age. For hard liquor it is 21 years of age. I am sensitive to areas of Georgetown and those close to the borders of Maryland and Virginia where people can come in and drink and get drunk and drive. I am sensitive to the positive side of why we need to have a 21-year-old drinking age. I am sensitive to the possibility that we are an oasis where the young people can come, not only to drink, but to do other things too that are not conducive to good health.

I am opposed to anybody drinking and driving. We have the most vigorous drunk driving enforcement program in the Nation. We have been vigorous in new advances in breath tests. And I think our alcohol level for drunkenness is .10, which is among the lowest in the Nation. Whether you are 14, 18, 55, or 60, we are opposed to anybody drinking and driving.

My reservations are in two areas. The first is statistics which show that the area where the greatest number of fatalities occur is between 23 and 28 and that 18 to 21 is not the highest area of fatalities.

I think the other reservation I have is that we can vote at age 18 or go to war at 18. You can go to Lebanon and die at 18. I have mixed feelings as to whether or not we ought to restrict it. But the practical situation we have here is that the authority to change the drinking age rests with the Council. The Council has authority over regulations, and increasing the drinking age is a regulatory change. I guess I am not giving you a very clear answer but we are not clear as to what we want to do.

I get the impression, and Mr. Clarke can speak to it better than I can, that the majority of the members of Council are not yet ready to increase the age to 21.

I was involved at a town meeting last week. I had a meeting in ward 2 last Thursday in Georgetown where at least the executive branch of the government is trying to come to a decision. It is a very difficult one for us, very controversial. We do not avoid controversial and difficult decisions, but I personally have mixed emotions about this. That means the people in my administration also have mixed emotions. It is hard for me to come to a conclusion. Of course, I am moving toward a position where we can try to support an increase in the drinking age, but it is very tough. Some Council members are opposed to changing it, and some want to change it. Quite frankly, we are walking a tightrope figuring what to do.

Senator LAUTENBERG. Mr. Mayor, I respect the fact that you have been candid about this and you have not simply said, OK, I support your point of view, Senator Lautenberg. But, nevertheless, you know that I disagree respectfully with your point of view.

COUNCIL'S ACTION ON INCREASING THE DRINKING AGE

I would ask, Mr. Clarke, do you have any comments you would like to make on this issue?

Mr. CLARKE. On the issue of the drinking age?

Senator LAUTENBERG. Yes.

Mr. CLARKE. There is legislation pending in the Council which would raise the drinking age for beer and wine in the District of Columbia from 18 to 21 years of age. It has been committed, as is the course in our legislative process, to the committee having jurisdiction over it. And that committee did move more rapidly than usual, more rapidly than usual with respect to the Council to hold hearings on the legislation. The hearings present a divided opinion from the city with respect to the issue. I do not know whether that bill has been scheduled for a vote in the committee. We have a rather established process for our legislation and, in fact, any legislation that has not been filed by now in the Office of the Secretary of the Council will not be voted on finally before the recess.

LOSS OF HIGHWAY FUNDING FOR FAILURE TO RAISE DRINKING AGE

Senator LAUTENBERG. I am not as interested in the process as obviously you have to be. I am awfully anxious to try to get to the bottom line here and, of course, the District has a right to do as it pleases. The law says that, you know, if you do not adhere to this uniform national standard that you lose highway money. It is perhaps not significant if it is measured off against some of the taxes that come from beer and wine sales.

Mr. CLARKE. I think that is a valid point, Senator. I think the real issue in terms of the consideration, at least by myself, is what is right to do, and it is not an economic issue either way. We do have a history in this Nation of trying to avoid the placement of responsibilities, the infringement of freedoms upon people upon whom full responsibilities are placed. This Congress recently, I would note, repealed the Youth Corrections Act which was an act which provided special benefits to people in just the age group we are talking about. They are not very related to drinking and driving, but it is the tenor of the Nation to say that persons in this age group must bear the full responsibilities of citizenship. And some of us do have serious difficulties in saying that we can take a class of people in this society who, for reasons beyond their own actions, should have all the responsibilities but none of the freedoms.

Senator LAUTENBERG. Mr. Clarke, you know, I have been through, obviously, in developing this legislation some of these arguments, and I would have to tell you—and you know this—that there are many, many freedoms, if they can be construed that way, that are curtailed in the interest of a stable democratic society.

Mr. CLARKE. We appreciate that. One of the things we have done, Senator, which you may not be aware of, is, as the Mayor indicated, that the District of Columbia was a little unusual. We are a little unusual in the sense of the numbers of incidents that we have had involving drunk driving last year. I believe we had two deaths of persons under the age of 21 associated with drinking.

Senator LAUTENBERG. Within the District?

Mr. CLARKE. Yes.

Senator LAUTENBERG. How about across the border in Maryland and Virginia?

REGIONAL APPROACH TO THE DRINKING AGE

Mr. CLARKE. We also had 94 persons killed by handguns in the same time period. We have an answer by our local Council of Governments. They do not enact laws, but they take positions on recommending approaches. They asked for a regional approach to the drunk driving, the drinking while under the age of 21, and also to the handgun issue. We have received a great deal of pressure with respect to one part of that regional approach. We have received no pressure from this institution and no real attention from the press with respect to the other issue. And some of us feel if we are going to take a regional approach to the control of dangerous substances, we have to deal with the dangerous substances that are killing and hurting our people as well as the dangerous substances that are hurting people in our neigboring jurisdictions. So certainly that consideration exists also.

I do not speak for the Council as we have not voted, but my own personal view is if we are going to talk about the years of 18 to 21 as being a transitional stage, we need to treat that as a comprehensive approach and not just say on one issue that full responsibilities are required, and on another issue the full privileges are not extended. And that might best——

SENATOR LAUTENBERG'S POSITION ON THE DRINKING AGE

Senator LAUTENBERG. I will not add to the debate with you on the structure of freedoms versus restrictions in our society. We have an age group whose longevity has not improved in 20 years. It is directly attributable to alcohol related accidents. There are all kinds of statistics. In my own State, we went through a cycle of events where we reduced the drinking age, saw the number of fatalities increase substantially, raised it back up, saw them drop dramatically, and we have all argued various sides of the issue, freedom, the ability to fight or the mandate to fight, the ability to vote, marry, et cetera, et cetera, and I have to point out to both of you that those who died in Lebanon, to use your example there, I visited Lebanon a year ago Christmas and saw a lot of our young people there, some of them came from States like mine, New Jersey, where they are not allowed to drink under 21. They still had to go fight. Maybe we ought to examine the fighting age.

There are statistics around, or studies around that say soldiers are better when they are 21. I went in the military when I was 18, but there are some statistics around. Maybe we ought to examine that. But right now we have our hands around something we know that can help prevent tragedy, whether fatality or permanent injury and, you know, if you had to make the freedoms argument to a family that lost a 17-year-old, or had a child crippled as a result of being in a car driven by a teenager who was under the influence, whether of alcohol or otherwise—Mayor, I could not agree with you more. The fact is we have to control impaired driving in whatever age group, but this age group has its own statistical result, and those statistics turn inhuman experience to enormous tragic consequence, and I would also, Mayor, like to tell you one thing. I have not been taken in by the beer and wine industry, but I have seen the ads that say 1 ounce of distilled spirits is no different in terms of its alcoholic content than a 5-ounce glass of wine or a 12-ounce can of beer. If you have three, four, five of those, any one of those things, you are going to be in the same condition. There is an illusion out there that says beer or wine is less harmful, but the quantities these things are consumed in are the equivalent of the same thing in distilled spirits.

I hope we will be able to get on with this legislation. Obviously I feel strongly about it, and the reason I feel strongly about it is thank goodness in my household we have not had such an experience with kids, but I have seen it with friends and constituents in the State of New Jersey. And one young man in a wheelchair visited with President Reagan when he came to North Jersey, and if you heard this youngster talk about what had happened to him, you would not be persuaded to make the argument that this is an impairment. Rather this is in the interest of the safety and health of these young people, just like we fought very arduously about clean water that our young people are drinking, or clean air, the removal of asbestos. So I hope that will get consideration and I would ask your support in that area.

I take it, Mr. Chairman, that you want to move the hearing along. What is your intention?

Senator SPECTER. We have to leave the hearing by 12:30 at the outside. I had hoped to have done it more expeditiously but I would like to turn at this time to the distinguished president of the City Council, Dave Clarke.

We look forward to your testimony and appreciate the fine cooperation you have given us in the past on behalf of the Council.

ACKNOWLEDGING CITY WITNESSES

Senator SPECTER. In Philadelphia we have the president of city council. I had better call you by the appropriate title.

Let me also note the presence of the city's budget director, Betsy Reveal, accompanying Mayor Barry, and Richard Siegel, the Council budget director.

Mr. Chairman.

STATEMENT OF COUNCIL CHAIRMAN CLARKE

Mr. CLARKE. Thank you very much, Mr. Chairman.

I appreciate the opportunity to testify. I will submit my prepared testimony.

I will say just very briefly in the interest of time that the fiscal year 1986 budget, as submitted to the Council by the Mayor, reflects the earlier priorities that the Council established in the 1984 budget. We had to make considerable changes with respect to employment programs, housing programs, education, and general public assistance. And in the fiscal year 1986 budget that was presented to us, we had the reflection of those priorities as well as we did not have the difficulty of a tax increase that was associated with the fiscal year 1985 budget.

The places where the Council chose to reflect its own priorities were as follows: Drug prevention and abuse, we feel strongly in the Council that considerable effort has been made at the front end of the drug process; the correctional issue, which we are also concerned with, and which you have shown such attention to is unfortunately the rear end of the process. We added $4 million to a $1.6 million request in the drug prevention area. I would note that the U.S. attorney is showing between 40 and 45 percent of the persons arrested today in the District of Columbia are being arrested for drug related crimes, and we consider this in the Council to be a foremost area of need and attention.

We have a pilot tenant subsidy program to operate in the District of Columbia. We hope to see that program funded to create essentially a local section 8 program.

The third major area of change is one which we had been rather regular about for the last 3 years. We have amended the budget which has been presented to us to provide a section for the retirement of the accumulated general fund deficit. This year we included within the District of Columbia financing portion of the budget a sum of $5 million for the retirement of the general fund deficit. But we went beyond that, Senators. We addressed the issue of the Federal payment.

The Mayor did not request any increase in the Federal payment. We determined to request it of you and the Mayor since. So the city has requested of you an increase in the Federal payment. It is sort of formula based. It is based upon the Consumer Price Index. It is a 5.5-percent increase which would be $23.3 million, and we decided to devote it all to the retirement of the general fund deficit.

I would submit, Mr. Chairman and Senator Lautenberg, this is consistent with the notion that the general fund deficit was a product of the work of both the pre-home rule government and the Federal Government during that time. The city retired over one-third of the deficit with its own funds and the application of a Federal payment increase, formula-based Federal payment increase, although not automatic formula-based Federal payment increase, to the retirement of the general fund deficit would be a recognition of the principle that the Federal Government has some responsibility to share in the retirement of this debt. It would also be recognition of the principle that the Federal payment, whether required use or not, ought to have some formula associated with it as to the increases that would be effected into it so that reasonable planning could be done.

The Council continues to develop its automated system of budget analysis which has helped us to make considerable changes that we had made in the last three budgets. We appreciate the assistance the executives provided us in viewing this information, and we think the changes which we made merit a proposal which reflect our priorities as well as those priorities he had in the budget, which we agreed with in the first place, of producing a good fiscal year 1985 budget presentation for you, sir.

PREPARED STATEMENT

Senator SPECTER. Thank you very much, Mr. Chairman. We have your complete statement which will be placed in the record.

[The statement follows:]

STATEMENT OF DAVID A. CLARK

MR. CHAIRMAN, AND OTHER DISTINGUISHED MEMBERS OF THIS SUBCOMMITTEE, I AM DAVID A. CLARKE, CHAIRMAN OF THE COUNCIL OF THE DISTRICT OF COLUMBIA. I AM HERE TODAY ON BEHALF OF THE COUNCIL TO TESTIFY ON THE DISTRICT OF COLUMBIA'S FISCAL YEAR 1986 BUDGET REQUEST AS ENACTED BY THE COUNCIL ON MARCH 19, 1985 AND SIGNED BY THE MAYOR ON APRIL 10, 1985.

THE BUDGET ENACTED BY THE COUNCIL TOTALS $2,689,077,000 IN AUTHORITY. OF THIS AMOUNT, $2,276,906,000 IS ALLOCATED IN FISCAL YEAR 1986 TO THE DISTRICT'S GENERAL FUND, $229,148,000 TO CAPITAL OUTLAY WITHIN THE THE GENERAL FUND, AND $182,622,000 TO THE WATER AND SEWER ENTERPRISE FUND FOR OPERATIONS AND CAPITAL CONSTRUCTION. THE COUNCIL ALSO ALLOCATED $4,151,000 TO THE LOTTERY AND CHARITABLE GAMES CONTROL BOARD FOR ITS OPERATING NEEDS, AND CONTINUES TO SUPPORT A CABLE TELEVISION ENTERPRISE FUND WITH ESTIMATE REVENUES TOTALING $250,000 TO OVERSEE AND COORDINATE THE PROCESS OF BRINGING CABLE COMMUNICATIONS TO RESIDENTS OF THE NATION'S CAPITAL.

THE BUDGET WAS SUBMITTED BY THE MAYOR TO THE COUNCIL ON FEBRUARY 1, 1985 TO COINCIDE WITH THE SUBMISSION OF THE DISTRICT'S ANNUAL FINANCIAL REPORT. THE COUNCIL MOVED EXPEDITIOUSLY THROUGH THE REVIEW OF THE BUDGET DURING THE LIMITED 50-DAY PERIOD GRANTED TO IT FOR REVIEW BY THE HOME RULE ACT. THE COUNCIL INCORPORATED $30.0 MILLION IN LINE-ITEM DECREASES AND INCREASES, INCLUDING $5.0 MILLION BUDGETED TO FURTHER REDUCE THE ACCUMULATED GENERAL FUND DEFICIT.

THIS CHANGE, WHICH SET ASIDE DISTRICT FUNDS TO REDUCE THE ACCUMULATED GENERAL FUND DEFICIT, MARKS THE 3RD STRAIGHT YEAR THE COUNCIL HAS AMENDED THE MAYOR'S PROPOSAL TO PROVIDE FOR THIS NEED. AS A MAJOR CHANGE TO THE DISTRICT'S BUDGET REQUEST THE

COUNCIL ASKED CONGRESS PROVIDE AN INCREASE OF $23,300,000 TO THE FEDERAL PAYMENT. WE HAVE PROVIDED IN OUR BUDGET FOR THIS INCREASE TO BE USED EXCLUSIVELY FOR REDUCTION TO THE ACCUMULATED GENERAL FUND DEFICIT.

THE NEED TO REDUCE THE GENERAL FUND DEFICIT IS CLEAR AND ONE WHICH THE COUNCIL HAS TRADITIONALLY GIVEN LEADERSHIP TO THE DISTRICT GOVERNMENT IN MEETING. AT THE END OF 1980 THE DISTRICT HAD AN ACCUMULATED GENERAL FUND DEFICIT OF $378.0 MILLION. AT THE END OF FISCAL YEAR 1984 THE DEFICIT WAS REDUCED TO $270.0 MILLION A REDUCTION OF MORE THAN $100 MILLION AND 28 PERCENT IN FIVE YEARS. THIS BURDEN HAS BEEN BORNE BY THE DISTRICT RELATING TO A DEFICIT THAT WAS ACCUMULATED BEFORE THE GRANTING OF HOME RULE. ON NUMEROUS OCCASIONS, THE DISTRICT HAS PROPOSED TO ELIMINATE THE DEFICIT BY FUNDING ONE-THIRD IN ANNUAL BUDGETS, ISSUING DEBT TO FUND ONE-THIRD, AND REQUESTING FEDERAL FUNDS TO MATCH ONE-THIRD. BY THE END OF FISCAL YEAR 1985, THE DISTRICT WILL HAVE MORE THAN LIVED UP TO ITS END OF THIS PROPOSAL. IT IS ESTIMATED THAT BY THE END OF FISCAL YEAR 1985 THE DISTRICT WILL HAVE CONTRIBUTED MORE THAN $130.0 MILLION -- OR 34 PERCENT -- TO THE REDUCTION OF THE DEFICIT THROUGH THE BUDGETARY PROCESS. I NOW ASK THAT THIS COMMITTEE CONSIDER STARTING THE CONGRESSIONAL BALL ROLLING WITH AN INCREASE TO THE DISTRICT'S FEDERAL PAYMENT IN FISCAL YEAR 1986 OF APPROXIMATELY $23.3 MILLION. THE COUNCIL -- IN ITS ACTION ON THE MAYORS FISCAL YEAR 1986 BUDGET PROPOSAL -- RECOMMENDED THE APPROPRIATION OF $23.3 MILLION AS AN INCREASED FEDERAL PAYMENT AND RECOMMENDED THAT THE INCREASE BE USED EXCLUSIVELY TO REDUCE THE ACCUMULATED GENERAL FUND DEFICIT. THE CONGRESS CAN MEET ITS END OF THE PROPOSAL BY APPROPRIATING APPROXIMATELY $23.3 MILLION OF RESOURCES FOR EACH OF THE FIVE YEARS BEGINNING WITH THE FISCAL YEAR 1986 BUDGET TO FURTHER REDUCE THE DISTRICT'S ACCUMULATED DEFICIT BY ONE-THIRD.

OTHER MAJOR CHANGES INCLUDE ADDING RESOURCES TO FUND A

PILOT TENANT SUBSIDY PROGRAM, INCREASING FUNDS TO COMBAT DRUG ABUSE IN THE DISTRICT AND TO PROVIDE ENHANCED DRUG TREATMENT AND EDUCATION PROGRAMS, AND ADDING RESOURCES TO THE DISTRICT'S AFDC PROGRAM TO ASSURE THAT RESOURCES ARE AVAILABLE FOR OUR POOR WHO MAY BE NEGATIVELY IMPACTED UPON AS A RESULT OF NEW FEDERAL GUIDELINES DEFINING FAMILY UNITS.

IN OTHER RESPECTS, THE FISCAL YEAR 1986 BUDGET CONTINUES TO EMPHASIZE THE PRIORITIES THAT THE COUNCIL INSISTED ON IN THE CHANGES IT MADE TO THE MAYOR'S FISCAL YEAR 1984 BUDGET. THE 1986 BUDGET ALLOCATES INCREASED PROGRAM RESOURCES FOR YOUTH, THE ELDERLY, THE DISABLED, THE SICK, THE INFIRM, THE MENTALLY ILL, THE UNEMPLOYED AND UNDEREMPLOYED.

THE BUDGET ENACTED BY THE COUNCIL REFLECTS THE PRODUCT OF CONTINUING EFFORTS TO IMPROVE THE INFORMATION EXCHANGE BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES ON BUDGET AND FISCAL MATTERS. SINCE THE APPROVAL OF THE FISCAL YEAR 1984 BUDGET, THE COUNCIL HAS BECOME ACCUSTOMED TO REQUESTING AND RECEIVING DETAILED FINANCIAL DATA FROM THE EXECUTIVE BRANCH OF GOVERNMENT. DURING THE PAST THREE YEARS, THE COUNCIL HAS EXPANDED ITS CAPACITY TO ASSIMILATE, ANALYZE AND QUANTIFY LARGE AMOUNTS OF DATA. THIS YEAR, IN REVIEW OF THE MAYOR'S FISCAL YEAR 1986 BUDGET REQUEST, THE COUNCIL REQUESTED AND RECEIVED DATA TAPES FROM THE DISTRICT'S FINANCIAL MANAGEMENT SYSTEM (FMS). WITH THIS DATA THE COUNCIL EXPANDED ITS INFORMATION BASE AND CONDUCTED ANALYSES IN SUPPORT OF THE COUNCIL'S BUDGET REVIEW PROCESS. THE COUNCIL NOW HAS AN EXTENSIVE BUDGET AND EXPENDITURE DATA BASE SPANNING NEARLY FOUR FISCAL YEARS AT THE LEVEL OF CONTROL CENTER AND OBJECT CLASS. THIS DATA IS UP-DATED QUARTERLY.

IN ADDITION TO HEAVY USE OF COMPUTER SYSTEMS FOR BUDGETARY REVIEW, THE COUNCIL SOUGHT IN THE 1986 BUDGET BUDGET SUBMISSION

INCREASED EXPLANATIONS OF ENERGY COSTS, EMPLOYMENT LEVELS AND PROGRAM MEASURES. BUDGET JUSTIFICATIONS CONTAINED COMPREHENSIVE DISCUSSIONS ON ATTRITION RATES, POSITION ALLOCATIONS, AND THE DISTRIBUTION OF EMPLOYEE SALARIES.

THE COUNCIL'S REVIEW OF THE MAYOR'S FISCAL YEAR 1986 BUDGET REQUEST WAS ALSO SUPPORTED BY IMPROVED DATA PRESENTATION IN THE DISTRICT'S COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR FISCAL YEAR 1984. WHEN THE COUNCIL, IN 1983, APPROVED THE MAYOR'S REQUEST TO APPOINT THE ACCOUNTING FIRM OF COOPERS AND LYBRAND AS THE DISTRICT'S NEW INDEPENDENT AUDITORS, IT REQUESTED CHANGES IN THE PRESENTATION OF INFORMATION IN THE ANNUAL AUDIT BEGINNING IN FISCAL YEAR 1984. I AM PLEASED TO NOTE THAT THE EXECUTIVE HAS INCLUDED IN THE 1984 AUDIT THE INFORMATION THAT THE COUNCIL REQUESTED.

THE FISCAL YEAR 1984 AUDIT CONTAINED INFORMATION AT A LEVEL OF DETAIL WHICH GAVE THE COUNCIL AN EXPANDED SNAPSHOT OF THE DISTRICT'S FINANCIAL CONDITION AT THE END OF THE FISCAL YEAR. INFORMATION DISPLAYED IN THE BALANCE SHEET ACCOUNTS, STATEMENTS OF REVENUES AND EXPENDITURES, AND SUPPLEMENTAL SCHEDULES WAS EASILY READABLE, AND PROVIDED MORE DETAIL THAN THE COUNCIL HAD RECEIVED IN PREVIOUS YEARS. THE AUDIT DISPLAYED REVENUES COMPARING BUDGET TO ACTUALS IN THE MANNER IN WHICH THE MAYOR PRESENTS MONTHLY REVENUE REPORTS TO THE COUNCIL. THE DISPLAY OF COMPENSATION LIABILITIES BY THEIR COMPONENT PARTS SUCH AS WAGES AND SALARIES, EMPLOYEE BENEFITS, INCOME TAXES, AND VACATION LEAVE PROVIDED THE COUNCIL WITH A BETTER UNDERSTANDING OF THE LIABILITIES ASSOCIATED WITH COMPENSATION. THE 1984 AUDIT FOR THE FIRST TIME CONTAINED A SCHEDULE OF CAPITAL PROJECTS SHOWING AUTHORIZATIONS, PRIOR YEAR AND CURRENT YEAR EXPENDITURES, UNEXPENDED BALANCES AND INTEREST CAPITALIZED.

PROBABLY THE MOST SIGNIFICANT FEATURE OF THE FISCAL YEAR 1984

ANNUAL AUDIT WAS THE INCLUSION OF A SUPPLEMENTAL SCHEDULE CONTAINING BUDGET VERSUS ACTUAL EXPENDITURES BELOW THE LEVEL OF APPROPRIATIONS TITLE. FOR THE FIRST TIME SINCE THE DISTRICT'S BALANCE SHEET AUDIT IN FISCAL YEAR 1979, INFORMATION ASSOCIATED WITH AN ANNUAL FINANCIAL REPORT WAS PRESENTED FOR EACH AGENCY OF THE DISTRICT SHOWING BUDGET AND SPENDING FOR PERSONNEL AND OTHER THAN PERSONNEL SERVICES. THIS PRESENTATION ASSISTS THE COUNCIL IN ADDRESSING THE QUESTION "HOW WELL ARE WE BUDGETING" AND AFFORDS US THE OPPORTUNITY TO ADDRESS BUDGET LINES WHERE SPENDING EXCEEDS BUDGET.

COMBINED, THE EXPANDED INFORMATION AT THE DISPOSAL OF THE COUNCIL -- AND OUR ABILITY TO USE IT ANALYTICALLY -- FACILITATES OUR UNDERSTANDING OF FINANCIAL AND BUDGETARY ISSUES DURING THE LIMITED 50-DAYS WE HAVE TO REVIEW AND APPROVE AN ANNUAL BUDGET REQUEST. AS A WELL INFORMED LEGISLATIVE BODY, WE ARE ABLE TO FOCUS OUR DISCUSSIONS ON ISSUES RELATING TO THE ALLOCATION OF RESOURCES RATHER THAN TO DEBATES QUESTIONING THE ACCURACY OF THE NUMBERS. THESE GAINS IN ACCESS, UNDERSTANDING AND USE OF INFORMATION HAVE GREATLY FACILITATED THE DECISION MAKING PROCESS AND WILL ULTIMATELY BENEFIT THE CITIZENS OF THE DISTRICT OF COLUMBIA.

THE FISCAL YEAR 1986 BUDGET CAN BEST BE CHARACTERIZED BY THE WORDS RECOVERY, PROMISE, AND CAUTIOUS ADVANCE. THE ACTIVE PROMOTION OF THE DISTRICT DURING THE LAST SEVERAL YEARS, THE REBOUNDING OF DEVELOPMENT, DOWNTOWN, EAST OF 15TH STREET, AND THE SUCCESS OF NEW STORES AND RESTAURANTS SUCH AS THOSE RECENTLY OPENED AT THE PAVILION AND NATIONAL PLACE, ARE ALL CONTRIBUTING TO A PROMISING ECONOMIC OUTLOOK FOR THE DISTRICT.

FAIR BUT REASONABLE WAGE SETTLEMENTS, IMPROVED EFFICIENCY IN PERSONNEL MANAGEMENT, GAINS IN DISTRICT RESIDENT EMPLOYMENT, CONSTRUCTION STARTS, AND OVERALL IMPROVED RETAIL SALES SUGGEST

CONTINUED PROMISE AND ADVANCE FOR THE DISTRICT. THIS SENSE OF PROMISE AND OPPORTUNITY, MUST BE TEMPERED BY UNCERTAINTIES ASSOCIATED WITH THE FEDERAL BUDGET PROCESS AND ITS POTENTIAL IMPACT ON ALL STATE AND LOCAL GOVERNMENTS. THE LARGE FEDERAL DEFICIT AND THE ADMINISTRATION'S DESIRE TO REDUCE SPENDING IN HEALTH, EMPLOYMENT, AND SOCIAL SERVICE PROGRAMS WILL NOT BE GOOD FOR URBAN COMMUNITIES. AND UNLIKE OTHER CITIES -- WHERE LOSSES MAY BE REPLACED BY STATE RESOURCES -- THE DISTRICT HAS NO STATE CAPITAL TO TURN TO. WE ARE A STATE, COUNTY AND LOCAL GOVERNMENT AND AS SUCH, MAY BE HURT MORE THAN OTHER URBAN COMMUNITIES WHO CAN LOOK TO OTHER SOURCES FOR RELIEF. MOREOVER, SPENDING IN SEVERAL MANDATED PROGRAMS AREAS SUCH AS PENSIONS, SUBSIDIES TO THE D. C. GENERAL AND ST. ELIZABETH'S HOSPITALS, AND DEBT SERVICE CONTINUE TO ESCALATE AND REQUIRE THAT PROGRAM EXPANSIONS AND NEW INITIATIVES MUST BE RESTRAINED DESPITE AN IMPROVED LOCAL FORECAST.

THE DISTRICT'S FISCAL YEAR 1986 BUDGET, THEREFORE, OFFERS ADVANCE WITHIN A FRAMEWORK OF CAUTIOUS OPTIMISM.

THE BUDGET PROVIDES PROGRAM INCREASES TARGETED TO PEOPLE IN NEED INCLUDING INCREASED RESOURCES FOR ADULT PROTECTIVE CARE, FOSTER CARE, DAY CARE, EDUCATION, THE HOMELESS. IT PROVIDES FOR GROWTH IN HOME PURCHASE ASSISTANCE PROGRAMS AND IN REHABILITATION FINANCING. THE BUDGET INCLUDES A MORTGAGE DEFAULT PREVENTION DEMONSTRATION PROGRAM DESIGNED TO PROVIDE ASSISTANCE TO DISTRICT RESIDENTS IN DANGER OF DEFAULTING ON THEIR HOME MORTGAGES FOR EMERGENCY REASONS SUCH AS TEMPORARY LOSS OF EMPLOYMENT OR ILLNESS. THE BUDGET INCLUDES RESOURCES TO EXPAND JOB TRAINING AND RETRAINING AND INCREASES FUNDING FOR EMERGENCY ASSISTANCE GRANTS FOR FAMILIES AND INDIVIDUALS FACED WITH TEMPORARY FINANCIAL CRISES. AT THE D. C. SUPERIOR COURT, THE 1986 BUDGET INCLUDES NEW FUNDING FOR FOR THE MULTI-DOOR DISPUTE RESOLUTION PROGRAM AND BEGINS AN EFFORT TO PROVIDE

INTERPRETER SERVICES TO NON-ENGLISH SPEAKING INDIVIDUALS AND THE HEARING IMPAIRED.

DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS TARGETED TO YOUTH ARE CLEARLY A MAJOR PRIORITY OF THE DISTRICT GOVERNMENT. THERE IS CONSENSUS AMONG LOCAL ELECTED OFFICIALS THAT THE DISTRICT'S DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS -- FOCUSING PARTICULARLY ON PCP, HEROIN, AND COCAINE-- MUST BE STRENGTHENED. GOVERNMENT CANNOT RESPOND TO THE SERIOUS PROBLEM OF DRUG ABUSE ONLY WITH LONG PRISON SENTENCES. IT MUST ALSO PAY ATTENTION TO PREVENTION AND TREATMENT. THE DISTRICT'S 1986 BUDGET INCREASES DOLLARS FOR DRUG ABUSE AND PREVENTION PROGRAMS BY MORE THAN 100 PERCENT OVER THE 1985 BUDGET AND NEARLY 210 PERCENT GREATER THAN EXPENDITURES MADE DURING FISCAL YEAR 1984.

THE 1986 BUDGET ALSO INCLUDES RESOURCES FOR MANY FAMILIES ON AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM (AFDC). THE DEFICIT REDUCTION ACT OF 1984 MADE SEVERAL CHANGES TO ELIGIBILITY REQUIREMENTS REGARDING AFDC. ONE CHANGE THAT WILL HARM SOME DISTRICT RESIDENTS IS A REQUIREMENT THAT ALL MINOR CHILDREN IN AN AFDC UNIT FILE WITH THE PARENT OR PARENTS AS ONE ASSISTANCE UNIT. THIS LEADS TO A NET REDUCTION TO THE ASSISTANCE OVERALL. TO OFFSET THIS LOSS IN RESOURCES, THE DISTRICT'S FISCAL YEAR 1986 BUDGET INCLUDES NEARLY 1.3 MILLION DOLLARS.

BEFORE CONCLUDING, MR. CHAIRMAN, I WANT TO ADDRESS ONE OTHER ISSUE THAT RELATES TO THE LONGER TERM FISCAL HEALTH OF THE NATION'S CAPITAL.

WHEN I CAME BEFORE THIS COMMITTEE LAST YEAR TO TESTIFY ON THE DISTRICT'S FISCAL YEAR 1985 BUDGET REQUEST, I ASKED THAT CONGRESS WORK WITH THE DISTRICT TO RESOLVE THE UNFUNDED PENSION

LIABILITY. I SAID AT THAT TIME THAT THE $52.0 MILLION 25 YEAR ANNUAL CONGRESSIONAL CONTRIBUTION BEGUN IN FISCAL YEAR 1980 WAS INSUFFICIENT BECAUSE IT WOULD ONLY COVER ABOUT 25 PERCENT OF THE OUTSTANDING LIABILITY.

THE DISTRICT'S OFFICIAL STATEMENT ISSUED WITH OUR FIRST BOND ISSUE INDICATED THAT PENSION PLANS FOR POLICE, FIRE FIGHTERS, TEACHERS AND JUDGES HAD AN UNFUNDED LIABILITY OF $3.4 BILLION AT THE END OF FISCAL YEAR 1984. MOODY'S, IN ITS RATING OF THE DISTRICT'S FIRST BONDS, DESCRIBED THE UNFUNDED PENSION LIABILITY AS ONE OF "THE MORE PROMINENT CONCERNS AFFECTING LONG-TERM CREDIT QUALITY" OF THE DISTRICT. MOODY'S CONCLUDED THAT "MORE REALISTIC FEDERAL PAYMENTS TOWARD ITS SHARE OF THE PENSION LIABILITY ARE NEEDED." THE VIEW BY THE BOND MARKET THAT THE DISTRICT'S UNFUNDED PENSION LIABILITY AFFECTS OUR LONG-TERM CREDIT QUALITY TRANSLATES DIRECTLY TO HIGHER CURRENT COSTS OF DEBT SERVICE THAT OUR CITIZENS MUST SUPPORT TODAY. I ASK AGAIN THAT CONGRESS AND THE DISTRICT WORK TOGETHER TO FINALLY RESOLVE THIS PENSION LIABILITY BY WORKING OUT AN EQUITABLE LONG-RANGE PLAN THAT WILL BOLSTER THE BOND MARKET'S PERCEPTION THAT THE DISTRICT'S LONG-TERM CREDIT QUALITY IS EXCELLENT.

THIS CONCLUDES MY TESTIMONY MR. CHAIRMAN. I WILL BE HAPPY TO ANSWER ANY QUESTIONS YOU MAY HAVE.

INCREASE IN FUNDING FOR DRUG ABUSE PROGRAMS

Senator SPECTER. I commend you for the increased funding on the drug rehabilitation. I think that is a very important item and I am glad to see the Council working well on that issue. It is a hard issue of priorities. There are limited resources, and we will take a very close look at the additions and modifications which you have made to show how diligently you and your fellow Council members approach this issue.

So we thank you for this very thoughtful consideration.

Mr. CLARKE. Thank you.

Mayor BARRY. Let me add that part of our difficulty in trying to come to a level of funding for drug programs was that this is unchartered waters. I do not think anyone in the country really has figured out what we do comprehensively about drug prevention, and drug treatment.

Our caution to the Council was, and we worked out a compromise on it, that we do not want money put in the budget that programmatically cannot be spent in a very useful way. Obviously we let the contract, and everybody comes in and says let us spend some money. I only cautioned them that since we are trying to find ways to have quality drug programs, treatment as well as prevention, we had rather make sure we can spend the money in a wise and fruitful way.

Senator SPECTER. There is some difference between a strong executive and a willful legislative branch who work out those matters, and we would have the same things on this side of town that you have on your side.

Senator Lautenberg.

Mayor BARRY. You have got problems at that end of the avenue. I think some of your problems are at the other end of the avenue.

Senator SPECTER. Well, some.

Senator LAUTENBERG. We have a lot there.

ADULT UNEMPLOYMENT RATE

Just for my information here, the unemployment rate among adults in the city, we talked about the teenage group, those you were trying to get jobs for in the summer. What is that? Can you tell me?

Mayor BARRY. The official rate is 8.3. It is higher than that if you take those who just stopped looking for work. The official rate is 8.3. It has gone down slightly in the last 3 months. There are about 620,000 people working in Washington now.

Senator LAUTENBERG. Are they residents?

Mayor BARRY. Inside the city itself. Probably about 55 to 60 percent of those are non-D.C. residents.

SOLVING THE UNEMPLOYMENT PROBLEM

Senator LAUTENBERG. And what do you see as prospects, because obviously joblessness, illiteracy, et cetera, all contribute to what we know to be the very serious source of criminality and erratic behavior. What do you see as the opportunity or the responsibility, if you will, or the likelihood that we can do anything, that you can do anything about solving some of those problems, the employment problems generally?

Mayor BARRY. Senator Lautenberg, we are in the process of, first of all, working with our public school system, because unless you have a good public school system that produces a good product, a person who can read and write and can compete in this tough world out here, then you really are just flailing at the darkness in terms of long-term solutions.

We have some short-term solutions in the sense that we have a policy which says that anyone who comes to the city for a variance in zoning, or any other action that the city has to take, where it enhances economic development, that that company, that organization, or that development has to sign what we call a first-source agreement. That is where they agree to use our employment services to hire people.

A shining example is the Sheraton Grand which opened about 3 months ago. Eighty-eight percent of all the persons hired at the Sheraton Grand came through our employment services system and are D.C. residents. The same was true with Zayre's Department Store that just opened here in the District.

Senator Lautenberg, that is not going to solve the structural unemployment in this town. We need massive help. I think it has to come, quite frankly, from the Federal Government in terms of job training. The local private business people, and you are a business person, do not see job training and saving all the unemployed as a mission. They will do some of it if they are good civic minded citizens.

The present programs we have, the Tollier Jobs Act does not do it, too much redtape. Employers will not bother with it. You have to have an expanded economic base, and we are limited because we are landlocked to do that.

Third, I think, as a matter of last resort, the Government may have to employ them after we have tried everything else. I think it is tragic that we have people in this city and in Pennsylvania and in New Jersey who want to work and cannot find work. So cities and counties and States, in my view, can only tackle part of this problem. If it is to be tackled nationally, I think it will take the greater involvement on the part of the Federal Government, not in make work programs or giveaway programs, but allowing people to have an opportunity to be trained.

I will give you an example. We have taken just last year about 40 young ladies who live in public housing, most of whom have never worked in their lives, who are probably second and third generation public housing residents, and put them in cosmetology training. And the great majority finished or will finish the 24th of this month, and they are going to start out probably earning $7, 8, 9, 10,000 a year in cosmetology. That is just a small portion of that. But I think that came out of that job training money. I think you can duplicate those kinds of situations around the country where you look at the need in the workplace and match it up with the supply and the demand, and you take care of a considerable number of people that way.

But I do not think that there are enough jobs in this country in the private sector to take all the unemployed unless you move them to growth areas like Houston and other places where they have a shortage of labor. But in the Northeast where we live, Pennsylvania and New York and Washington, even Illinois, even if everybody were trained, there are not enough available jobs in these jurisdictions in the private sector to put them to work.

Senator LAUTENBERG. We unfortunately do not have enough time to discuss all the things that are of interest, and I appreciate the chairman's indulgence in giving me some time to do some learning here.

WASHINGTON AS A MODEL CENTER

Mayor Barry. Sir, let me add one point which Senator Specter and I talked about before.

We believe anything that can be done in Washington ought to be a model to try to do so. So if you have any ideas about that, we certainly want to try to do it.

Senator Lautenberg. Even as we talk, talk about the training facilities and those kinds of things, obviously it starts at the beginning. The child has to have enough nutrition to be able to think clearly, has to have enough protection to be able to be safe, has to have enough basic education to want to exercise a mind when we give him those opportunities. It is amazing what kind of product we get, and we see it in my State and across the country.

I hope to get more familiar with the fine things that do take place. I tell you that I want to share in the budget review. That is something I have done for a long time, examine budgets, and I come out of the computer business and numbers mean a great deal to me. And I would like to feel comfortable as we participate in a review of programs that the funding is either adequate or, if not, to make sure that it is understood that it is inadequate, or that if I can call your attention to someplace where I think you can spend your money better, I would like to feel free to do that as well. So I will depend on you if you will, each of you, to be in touch so we can perhaps spend a little more time just chatting informally and give me a chance to be better informed about the city.

SUBMITTED QUESTIONS

I have some questions which I will submit, along with those from Senator Specter, for written response for the record.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY SENATOR SPECTER

Office of the Budget

SENATOR SPECTER:
1. The supplemental budget submitted to the Congress contains no additional set aside for the retirement of the accumulated deficit. Why is that?

MS. REVEAL:
1. The fiscal year 1985 budget as approved by the Congress in conference appropriated $10,100,000 for the payment of the general fund deficit but directed the Mayor to reduce the deficit by $20,100,000 by reducing other expenditures or increasing revenue. The financing provided for the fiscal year 1985 budget totalled $2,114,964,000 or $8,845,000 greater than the total $2,106,119,000 appropriations approved in conference. Of this excess, $5,087,000 was to be used to finance small capital projects. The remaining $3,758,000 was revenue available to finance part of the additional $10,000,000 deficit repayment.

The fiscal year 1985 supplemental budget uses this available excess revenue plus another $41,309,000 increase in estimated revenues to finance the entire $20,100,000 (all of which is included in the Supplemental appropriations request), and another net $35,067,000 in expenditures, still leaving a $5,087,000 excess for investment in small capital projects. The supplemental budget thus accomplishes the conference directives by adding $10,000,000 to the appropriation for deficit repayment and finances the entire amount.

DEPARTMENT OF CORRECTIONS

SENATOR SPECTER:
1. The Supplemental request for the Department of Corrections is $4.5 million, of that amount $1.8 is requested in the Personal Services, what are these funds needed for?

MR. PALMER:
1. The $1.8 million is requested to fund a 3 percent FY 1985 bonus recommended by the Mayor and approved by the Council.

SENATOR SPECTER:
2. The Supplemental request includes an additional $1.15 million to accommodate an increase of 500 inmates in the average daily population. What implication does this increase have for the fiscal year 1986 budget estimate?

MR. PALMER:
2. The FY 1985 budget request was prepared based on a population assumption of 6,050. Currently, the population stands at just under 6,500. If this population level is maintained or exceeded in FY 1986 it will be necessary for the Department of Corrections to request additional resources.

SENATOR SPECTER:
3. The sum of $1.2 million is asked to expand the substance abuse surveillance and counseling program. How many inmates are currently enrolled in this program and how many more will be accommodated by this increase?

MR. PALMER:
3. The substance abuse and counseling program currently registers approximately 574 inmates enrolled in the program. It is anticipated that the increase will provide services for an additional 425 inmates in counseling and drug abuse screening.

SENATOR SPECTER:
4. What measures are being used to gauge the success of this program?

MR. PALMER:
4. The following is a summary of measures undertaken since the inception of the program beginning in January 1985 thru the end of April 1985. The success of the program can not truly be measured until it has been in place long enough to track participants for some period of time after release from incarceration. Currently, all participants are still institutionalized. The figures provided here demonstrate the scope of the program.

Persons Admitted	574
Still In Treatment	344
Cases Closed	230
Favorable (Graduated From DAPP)	186
Unfavorable (Failed To Complete Program)	44

Counselling Services	
Individual Contacts	2,774
Group Sessions	974
Family Contacts	15
Follow-Up Counselling	56

SENATOR SPECTER:
5. In the fiscal year 1985 appropriation act, PL 98-473, included $6.2 million for continuation of the Criminal Justice Initiative Programs. This amount was one-half of the amount estimated to be needed for the entire year. Will additional funds be needed to continue these programs for the balance of 1985?

MR. PALMER:
5. It is projected at this time that additional funding of $5,403,000 is required to continue the program for the balance of FY 1985.

SENATOR SPECTER:
6. What repairs are needed to reopen Youth Center I after the methane gas explosion? Will any of these funds be reimbursed from the owner of the landfill from which the methane gas fumes originated?

MR. PALMER:
6. To reopen Youth Center I, the department's repair cost is estimated at $338,000. This includes renovations to the entire structure which consists of painting, plumbing, electrical, masonry, glazing, and mechanical replacement. Water damage resulted from fire fighting efforts and there was system deterioration due to the shut down of the institution during the winter. The department will not be reimbursed for any repair costs by the owner of the landfill, at this time. Questions of liability have not as yet been resolved.

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

SENATOR LAUTENBERG:

For Barry and Clarke Re: Regulation of Residential Care Facilities

I assume both of you saw the recent articles in the Post concerning the regulation--or lack of it--of residential care facilities in the District. They depict a really sorry situation. Apparently nursing homes, clinics and similar facilities can almost literally get away with murder because the responsible officials consistently fail to enforce decent standards.

1. Do these articles provide a basically accurate description of the situation?

MAYOR BARRY:

1. No, these articles do not provide an accurate description of the situation. The newspaper articles in the Washington Post alleged five areas of deficiencies related to the regulation of Residential Care Facilities as conducted by the Service Facility Regulation Administration of the Department of Consumer and Regulatory Affairs. While the Department does recognize some deficiencies within this area, the articles do not fairly represent or describe the overall situation. Each of the article's allegations interpret basic facts, policies, and procedures out of context of the overall regulation of such facilities. For example, the article states "that the Service Facility Regulation Administration routinely gives operators advance notice of inspections".

Indeed advance notice is provided to hospitals, ambulatory surgical centers, and community residence facilities. For hospitals, this practice is consistent with the Federal State Operations Manual which requires advance noitification. Ambulatory surgical centers are given prior notice of only a few hours so that surgeons are available to the inspection staff. Prior notice is not issued to nursing homes; intermediate care facilities for the mentally retarded, end stage renal dialysis facilities, home health agencies, pharmacies, and laboratories.

The department, as a result of the allegations raised in the article, will conduct a thorough review of present policies, procedures, and practices of the Service Facility Regulation Administration. This DCRA study will review present policies, procedures, and practices and will develop new or revised regulations as required to eliminate the known deficiencies.

SENATOR LAUTENBERG:

2. What will it take to remedy the situation? Can you take care of it administratively? Or will it require legislation? What is being done now?

MAYOR BARRY:

2. Prior to the enactment of D.C. Law 5-48, the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act

of 1983, effective February 24, 1984, the Service Facility Regulation Administration did not have intermediate licensure sanctions to impose against noncompliant facilities. Licensure revocation, suspension or denial were the only options available to remedy the situation. These were not generally practical or feasible solutions due to the lack of beds or alternative placements in the District of Columbia, particularly as it would relate to the closing of large facilities. With the use of restricted and provisional licenses, tools available in D.C. Law 5-48, the Administration now has additional enforcement mechanisms or remedies available to secure compliance.

An additional legislative initiative which may increase compliance and enforcement capabilities of the Department is the proposed Civil Infractions Act, currently under review by the City Council. The Administration will be able to levy fines against facilities that are in noncompliance with regulations. This will strengthen enforcement capability; the use of fines will serve to secure more expeditious correction of violations found and act as a deterrent to future noncompliance.

Currently the Administration is tightening its complaint handling, documentation and record keeping procedures to ensure that problems noted in the article do not reoccur. Staff training sessions are being conducted, monitoring of staff performance is being done and new record keeping procedures have been developed. These actions along with the enforcement authorities under federal programs and authorities established under D.C. Law 5-48 represent the full extent of our capabilities at this time.

SENATOR LAUTENBERG:

The June 6 edition of the Post carried an article relating to travel expenses claimed by the President of the University of the District of Columbia, Dr. Robert L. Green. Many of the items claimed are, to say no more, pretty questionable. I can see no reason why UDC should reimburse its President for $260.00 hotel rooms, his spouse's travel or trips to Atlanta with stopovers in Seattle for personal matters.

> Does the District have apolicy regarding reimbursable travel expenses? (Answer: yes. $75 Per Diem with a maximum of $12.50 for dinner, $8.00 for lunch and $4.50 for breakfast).
>
> Does this policy apply to UDC in general and to the President in particular? Why not?
>
> Do you plan to recommend any measures to prevent such abuses in the future?

MAYOR BARRY:

This policy applies to UDC in general and to the President. The Board of Trustees negotiated a contract with the President of the University which covers travel expenses for the President and his wife when she accompanies him to represent the University.

The Board of Trustees is cognizant of its responsibilities to monitor travel expenses of its employees. The University adheres to District guidelines and guidelines established by the Board of Trustees.

SENATOR LAUTENBERG:

1. You are requesting a $4.966 million supplemental to complete renovation of D.C. Superior Court Facilities. The original estimate for this project was $1.8 million, which the Congress provided in FY 84. What accounts for this need for increased funding?

MAYOR BARRY:

1. An increase of $4.966 million in budget authority is necessary because of major changes in the scope of work. A thorough analysis of project requirements created a need for the following changes: (a) increase square foot area of renovation from 23,100 square feet to 82,120; (b) provide access to holding cells; and (c) demolish 77,650 square feet of existing interior areas.

SENATOR LAUTENBERG:

1a. My understanding is that the people who did the original estimate never actually visited the Court. Is this true? Is this the standard operating procedure for estimating construction projects?

MAYOR BARRY:

1a. It is true that a site visit was not made in this case. Normally, a site visit is made and a detailed scope of work is developed prior to estimating construction projects. For this project, however, the estimate was done in a very short timeframe at the request of the Senate Subcommittee in order to get the request into the Senate budget.

SUBCOMMITTEE RECESS

Senator SPECTER. Thank you very much, Mayor Barry, and thank you very much, Mr. Clarke. That concludes our hearing. The subcommittee will stand in recess.

[Whereupon, at 12:35 p.m., Tuesday, June 11, the subcommittee was recessed, to reconvene at the call of the Chair.]

MATERIAL SUBMITTED BY NONDEPARTMENTAL WITNESSES

[CLERK'S NOTE.—The following statements on the District of Columbia budget for fiscal year 1986 were submitted by community witnesses:]

STATEMENT OF THE GREATER WASHINGTON ORGANIZATIONS FOR GOVERNMENT FUNDING OF SOCIAL SERVICES

This is the testimony of Greater Washington Organizations for Government Funding of Social Services—GWOGFOSS. As you know from our testimony before you the last three years, GWOGFOSS is a coalition of 23 organizations in the Washington Metropolitan Area (a list of member organizations is attached) united in the belief that it is the responsibility of Government, at all levels, to provide those services necessary for a healthy, happy and well-educated populace.

We will address four areas that we feel should be considered when determining the appropriation to the District of Columbia for Fiscal Year 1986. We support full appropriation of the budget decided upon by the Mayor and Council of the District of Columbia.

LOCAL BUDGET DECISIONS

Some of our testimony today concerns decisions that are rightfully the Federal Government's. But most of our presentation concerns local budget decisions. We are testifying on these subjects not because we wish you to rearrange in any way the budget duly formulated by the elected officials of the District of Columbia. Rather, we are pointing out deficiencies in local services as proof of the insufficiency of Federal support of District finances.

Everything about local budget decisions in this testimony was presented in February to the appropriate committees of the D.C. City Council. The Council did not see fit to address these concerns with the revenues currently available to the City. But we hope that the Mayor and Council will be able to attend to these and other program shortfalls in the future if Congress knows about these funding problems and increases substantially the Federal contribution to the City in an effort to help solve them.

In testimony included in the record of the hearing of the Committee on Human Services of the Council of the District of Columbia held February 15, 1985, GWOGFOSS commented on the proposed FY

1986 budget for the District's Department of Human Services.

Aid to Families with Dependent Children/General Public Assistance (AFDC/GPA)

We supported the increase in FY 1985 in AFDC/GPA payment levels. We continue to be troubled, however, by the fact that the current payment levels for these programs still only provide approximately one half of the "Standard of Need" for AFDC/GPA recipients, as determined by the District Government. What's more, since the FY 1985 increase in benefits, the real payment level has been eroded by about four percent by inflation. We feel strongly that the AFDC/GPA payment levels must be increased so that they will support people at at least 100 percent of the recognized Standard of Need.

Regarding the caseload and other economic projections contained in the proposed budgets for AFDC and GPA, we note with concern that they reflect an expectation that the relatively positive national economic performance of FY 1985 will continue through FY 1986. Such projections are not only at least somewhat contrary to the predictions of many economists, but are also in conflict with other portions of the proposed budget itself, including that for the Department of Employment Services, which not only makes reference to "the uncertainty over the economy", but also to the possibility of "a national economic downturn...in [FY 1986]". In short, we are concerned about the effect such a downturn could have on these programs.

Finally, we wonder how much of the proposed budget's projected 100 decrease in GPA cases is realistic, given the large impact deinstitutionalized St. Elizabeths patients could have on the GPA caseload. Although an increase in this source of GPA recipients is recognized in the budget, we fear the increase may turn out to have been underestimated, given the great amount of fiscal uncertainty that overhangs the Hospital, and the District Government itself for that matter, as a result of financial responsibility for St. Elizabeths having been transferred (in our opinion unfairly and unwisely, as the Subcommittee knows from our testimony last year on the Hospital) to the District by H.R. 6224, "The Saint Elizabeths Hospital and District of Columbia Mental Health Services Act". (See "St. Elizabeths Hospital" below.)

In testimony included in the record of the hearing of the Committee on Housing and Economic Development of the Council of the District of Columbia held February 14, 1985, GWOGFOSS commented on the proposed FY 1986 budget for the District's Department of Employment Services.

Department of Employment Services

We recognize and appreciate the high level of local resources put towards jobs programs by the District Government. We are also pleased that the number of locally-funded job slots available under the Youth Employment Act (YEA) is slated to increase in Fiscal Year 1986 by 2,165, or 15.5 percent, over FY 1985.

Unfortunately, as the District has been strengthening its commitment to Government-funded jobs, the Federal Government has been abandoning the principal. The replacement of the Federally-funded Comprehensive Employment and Training Act (CETA) with the Job Training Partnership Act (JTPA) substantially reduced the number of jobs in the District funded with Federal money. In fact, if the proposed budget's predictions for FY 1986 come to pass, the total number of District- and Federally-funded job slots will actually be 19 fewer than in FY 1982.

The need for Government-funded jobs is certainly no less great now than it was in FY 1982—the proposed-budget document itself refers to "the uncertainty over the economy, including the potential for additional federal layoffs", and mentions, as stated earlier, the possibility of "a national economic downturn...by [FY 1986]". While we support attempts to stimulate economic development, which hopefully will create private-sector employment, we strongly believe that Government has a responsibility to provide employment to combat both cyclical and structural unemployment. The Federal Government is abdicating that responsibility. The District Government must pick up all of that slack; it needs to raise the total number of Government-funded jobs considerably above the FY 1982 level, in order to better meet the need for employment that exists in the District of Columbia.

FEDERAL BUDGET DECISIONS

In FY 1985, the District received Federal funding of $8,371,000 for special crime initiatives and $1,502,000 for education initiatives. We urge that if Congress expects these activities to continue, it appropriate additional Federal funds for the purpose. In no way must the District be saddled with any of the expenses required, or implied, by the above activities.

We also urge the members of this Subcommittee, both as members of the full Appropriations Committee, and as individual members of Congress, to fight for increased funding of all Federal programs that help to improve the level of well-being of the people of the City, the region and the Country as a whole.

Finally, we would like to bring to your attention a situation involving the Federal Government and an important private-sector component of the District's human services system, the Community for Creative Non-Violence (CCNV). As you may remember, last November Department of Health and Human Services (HHS) Secretary Margaret Heckler announced that "President Reagan has asked me to authorize the renovation of the temporary shelter at 2nd and D Street, N.W., to make it into a model physical shelter structured to house the homeless in the District of Columbia". CCNV has had open-ended use of the building since January 1984, housing 700-800 men, women and children for whom no other shelter space is available. CCNV has had prepared a detailed plan of renovation that would result in a model shelter facility, one which would truly fulfill Secretary Heckler's stated purpose of not only providing shelter, but also "preserving dignity in the homeless". This plan would cost a total of $10,000,000.

However, to date the Federal Government has offered only $5,000,000, which will not be enough to provide even all of the basic, lasting repairs that the building needs, much less produce a model facility. Furthermore, HHS has repeatedly refused to give CCNV any details of which parts of the original $10,000,000 plan are to be dropped.

CCNV has done yeoman work in lining up a vast array of volunteer professional services that would be provided at a model facility: the University of the District of Columbia (UDC) is offering continuing education, and UDC's nursing school will provide student nurses for the shelter's clinic (thus lessening the homeless's dependence on costly emergency-room care). Additionally, the Howard and George Washington University medical schools are working to involve other area hospitals in the shelter's clinic. Antioch Law School is offering entitlement and landlord-tenant legal clinics. The Psychiatric Institute is willing to provide drug and alcohol counseling. And CCNV is in the process of involving the business community to help find jobs for shelter residents, and the real estate industry to help find permanent housing for them. All of this to be provided on a volunteer basis.

Given CCNV's efforts, we do not feel that the Federal Government should be allowed to renege on its promise to provide a "model physical shelter structure" in which the above activities could be carried out. Furthermore, neither CCNV nor the District is in any financial condition to handle the continuous physical-plant breakdowns that would occur if the Federal Government goes ahead with only its $5,000,000 "patch-up" job.

We urge you to look into this situation and work for full funding ($10,000,000) of Mr. Reagan's promise to CCNV's shelter.

THE FEDERAL PAYMENT

We urge this Subcommittee to appropriate a full Federal Payment for the sixth year in a row, this time one of $425 million.

Although we support this figure, we feel it should be much higher. The total tax revenues foregone by the District due to the Federal presence and Federal policies is estimated to be over one billion dollars ($1,109,800,000) in FY 1985. Notwithstanding any benefit to the District resulting from the net value of services provided by the Federal Government to the District and vice versa, it seems clear that the Federal Payment should be greatly increased.

We also would like to express our strong support for legislation that is now being contemplated that would establish a formula-based Federal Payment for future fiscal years. Under this proposal, the Payment would be set each year at 35 percent of the taxes raised by the District two years previously.

Ever since 1802, when the District of Columbia's residents asked the Federal Government to help pave the new Capital's streets, the citizens of the District have recognized the responsibility of the United States Government to help the city it spawned[1]. Unfortunately, the Federal Government has not always recognized what it owes the District: for many years the streets went unpaved. Still, Congress made intermittent payments of varying size to the local government for the next 30 years, and, after Congressional panels reported in the 1830's that the District couldn't afford—largely because of the Federal presence—to pave Pennsylvania Avenue, the Federal Government not only paved the thoroughfare, but made the Federal Payment more regular, and larger. For the next 40 years the Payment constituted an average of about 40 percent of the total District budget. The District of Columbia Organic Act of 1878, besides creating the commissioner-form of government, called for all local tax revenue to be deposited in the U.S. Treasury and for Congress to exercise the total control over the District's budget that it still enjoys today. But in return, the Federal Government would provide half the operating budget for the District. This system prevailed for nearly half a century, then was abandoned in the 1920's in favor of the unpredictable "lump sum" payment that has been in use ever since. The Senate D.C. Appropriations Subcommittee recommended a formula payment in 1944, but was ignored. In 1973, the Senate-passed Home Rule Act called for a fixed payment of 40 percent of locally-raised revenue. The House version of the Act called for continuation of the lump-sum payment system. The House version prevailed.

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[1] This and following historical information: The Federal Payment to the District of Columbia, 1790-1980, (Staff study for the House District Committee), August 14, 1979.

On May 22, 1896, the House District Committee unfavorably reported out a bill to repeal the 50 percent Payment, stating in part: "The circumstances under which the national capital was founded by the National Government for its own use created an equitable obligation on the part of the National Government to share the expenses of its maintenance and development"[2]. This is the key point in any discussion of the Federal payment: The District did not ask to be created. And just as a child has the right to look to its parents for adequate support, so the District can expect—even in maturity—to receive ample, predictable financial compensation from a Federal Government whose presence is a continuing burden.

ST. ELIZABETHS HOSPITAL

As you may remember from our testimony before you last year, we are very concerned about the potential dangers to the District's budget, and thus the City's human, health and educational services, posed by H.R. 6224, "The Saint Elizabeths Hospital and District of Columbia Mental Health Services Act", which was enacted last year. We still feel that the transfer of financial responsibility for St. Elizabeths and its patients to the District presents a potentially

[2] ibid., page 14

serious economic drain on the City's already over-burdened finances, particularly in the out-years of the transfer plan, when the remaining Federal St. Elizabeths subsidy to the District will be eliminated.

We feel that, even though H.R. 6224 is now in effect, it is still important that the Subcommittee have data relevant to the fairness of the transfer, and associated issues, so that should the District, as we feel it might, develop problems funding the expanded Mental Health Services Administration created by H.R. 6224, the Subcommittee might be in a better position to respond favorably to any request for assistance that the City might make.

Thus we attach, for inclusion with this testimony in the Record of this Subcommittee, a copy of the testimony we prepared for the Record of the hearing held by the House District Committee, on June 6, 1984, to consider various St. Elizabeths bills, and a copy of the attendant Informal Analysis of one of those bills (H.R. 5700).

We would like to stress that, as these two items, through an administrative oversight of the House District Committee, were not included in the Record of that Committee's hearings, we hope you will include them in this Subcommittee's Record, so that they may be available for your future use.

[ATTACHMENT]

STATEMENT OF GWOGFOSS PREPARED FOR THE HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA

This is the testimony of Greater Washington Organizations for Government Funding of Social Services—GWOGFOSS. As the Chairman and the ranking minority member may remember from the information we delivered to them earlier this year on St. Elizabeths Hospital (a copy of our letter to Chairman Fauntroy is attached), GWOGFOSS is a coalition of 21 organizations in the Washington Metropolitan Area (a list of member organizations is attached) united in the belief that it is the responsibility of Government, at all levels, to provide those services necessary for a healthy, happy and well-educated populace.

We believe that full responsibility for funding the Federal mental hospital St. Elizabeths should fall completely on the Federal Government. The question of who should fund and control St. Elizabeths is not new. It has been debated on and off for the past 35 years. Before giving our opinions of the present proposals, we think it would be instructive to briefly review the history of this issue[1]. We have identified nine previous proposals to transfer St. Elizabeths from Federal to local control:

1. In December 1946, during the Truman Administration, the District Budget Officer, Walter Fowler, urged the Commissioners to acquire St. Elizabeths from the Federal Government. Truman had ordered that military patients no longer be sent there. Fowler's plan was to lump numerous health and welfare functions together at St. Elizabeths to save the City money. The idea was considered inappropriate by the St. Elizabeths Superintendent, Dr. Winfred Overholzer, and by the D.C. Health Council.

2. In April 1953, Oveta Culp Hobby, the first Secretary of Health, Education and Welfare, told a Congressional committee that St. Elizabeths should be turned over to the District because it primarily served District residents.

3. In March 1965, Dr. Murray Grant, the Director of the D.C. Health Department, began a campaign to take over St. Elizabeths. His reason was that the trend toward community-based mental health care required local control of the Hospital.

4. In 1968, President Johnson proposed "an orderly transition" for St. Elizabeths, from Federal to local control, "but only after a long-term upgrading of...the quality of the Hospital... ."

5. In April 1969, President Nixon announced plans to transfer St. Elizabeths to the District ahead of the existing time-table. The American Psychiatric Association, the D.C. Mental Health Asso-

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[1] Except where noted, information taken from contemporary press reports.

ciation, and Senator Joseph D. Tydings, Chairman of the Senate District Committee, among others, voiced opposition. In response, the Administration appointed a committee, under the chairmanship of Dr. Howard P. Rome of the Mayo Clinic, to study the situation.

6. In July 1970, the Rome Committee released its report[2], recommending the creation of an "independent Mental Health Authority for the District of Columbia" which would incorporate "St. Elizabeths Hospital and all other public health services and facilities in the District...through a prompt but orderly transition process." The report said that the "Authority will consist of representatives from consumers and providers of mental health services both from the public and private sectors in the District of Columbia."

7. In January 1973, it was disclosed that President Nixon planned to propose the transfer of St. Elizabeths from the Federal Government to the District. In March of that year it was reported that, due to complications, Nixon would postpone his recommendation.

8. In February 1975, President Ford proposed the transfer of St. Elizabeths to the District in his FY 1976 budget. House District Committee staffers prepared a report that opposed transferring the facility at that time. Dr. Luther Robinson, Superintendent of St. Elizabeths, resigned during the course of the hearings on the proposed transfer; reporters at the time quoted sources who said he resigned because he opposed the transfer.

9. In January 1980, President Carter proposed in his FY 1981 budget that a public corporation be established to manage St. Elizabeths.

From 1981 to the present, the Reagan Administration has managed to increase the District's payment to St. Elizabeths, causing severe economic strain on the City's finances.

[2] "Report of the Advisory Committee to the Secretary of Health, Education and Welfare on the Transfer of St. Elizabeths Hospital From D.H.E.W. to the District of Columbia", July 24, 1970, pp. 10-11.

Concerning the various proposals that are now being considered for the future operation of the Hospital, we oppose H.R. 5667, the Reagan Administration's proposal for a private corporation to run the Hospital, as being antithetical to an institution that is, has always been, and should remain a public trust and benefit. We also oppose H.R. 5708, the so-called "G.A.O. Bill", the reasons for our opposition being contained in the already-mentioned attached letter to Chairman Fauntroy. Finally, we oppose H.R. 5699, the District's proposed multi-year plan to transfer most of the population of St. Elizabeths to an expanded District mental health care network. The plan envisages the Federal Government funding a proportionate share of the costs of the District's mental health system in accord with the magnet effect of the District's being the nation's capital.

Our opposition to H.R. 5699 is based on three concerns. First, it would effectively eliminate the financial benefit the District still receives from the Federal Government's operation of the hospital, and would preclude any increase in that benefit that might be negotiated in the future.

Second, because the District believes that over one-half of the patients at St. Elizabeths are drawn here by, and thus are the responsibility of, the Federal Government, and the Federal Government undoubtedly subscribes to a substantially lower figure, we foresee a continuing, massive battle over what the Federal share of the costs should be.

Third, despite the District's desires, the Federal Government would most likely close St. Elizabeths if the City's proposal is carried out. This will in effect burn the District's bridges behind it, and place the District in fiscal jeopardy if the Federal Government were to ever redefine its obligation to provide a proportionate share of the City's mental health costs. As long as the Hospital is open and serving patients, it will be much harder for the Federal Government to stop paying for the patients it has accepted responsibility for. But with the Hospital closed, an "out of sight, out of mind" psychology on the part of the Federal Government could well end up burdening the District with the full cost of mental health care in the City.

The argument is made that a transfer of patients to District supervision would facilitate the implementation of modern, community-based mental health care. But the Federal Government is just as capable as the District of running, and paying for, such a system. The desire for an improved method of treatment should not force the District to go in the fiscally-dangerous direction that is indicated in H.R. 5699.

Regarding the various proposals for a public corporation to run St. Elizabeths or a combined St. Elizabeths-District Mental Health Services Administration network, including H.R. 5700, we would only be able to support, and then only as a last, and poor, resort, a proposal that: 1) Guaranteed that the Hospital would always be able to accomplish its mission of providing the highest level of mental health care and research, 2) Provided the strictest protections to St. Elizabeths' employees, perpetually maintaining their status at, or above, its current, Federal, level, and 3) Fully protected the District from any substantial increase in its financial obligation to the Hospital. Regarding this last point, attached is an informal analysis of the various cost burdens on the District that could result from the implementation of the Funding Provisions that were detailed in a draft version of H.R. 5700, dated April 19, 1984. This analysis indicates a potentially vast increase in the amounts of money that the District would have to pay to support its share of the proposed Corporation, the size of the increase depending on how the Corporation would devide responsibility for patients it served, as well as the availability of outside sources of revenue (i.e. grants.) We hope you will give these figures your consideration.

In conclusion, we would like to repeat that it is our coalition's primary position that the Federal Government should take on full financial responsibility for St. Elizabeths Hospital. In testimony prepared for inclusion in the record of the full Committee's hearings on the increase in the Federal Payment to the District of Columbia, held May 3, 1984, we reviewed the massive inadequacy in the size of that payment. Whereas in FY 1985 the Payment will most likely be $425 million, the District estimates the total tax revenue it foregoes due to the Federal presence and Federal policies to be over one billion dollars ($1,066,300,000) in Fiscal Year 1984. Thus we feel that the District is justified in retaining any and all financial benefit it can from Federal sources, including, in this instance, St. Elizabeths.

INFORMAL ANALYSIS

OF THE FUNDING PROVISIONS CONTAINED IN THE DRAFT VERSION, DATED APRIL 19, 1984, OF H.R. 5700 — THE NATIONAL CAPITAL MENTAL HEALTH SERVICES CORPORATION ACT OF 1984

The following charts show the approximate estimated division of expenses of the National Capital Mental Health Services Corporation as proposed in a discussion draft, dated April 19, 1984, of a Bill to establish such a Corporation. [Since the preparation of this analysis, such a Bill has been introduced in Congress—H.R. 5700. To the extent that H.R. 5700 conforms to its draft version, this analysis is valid for H.R. 5700.]

The amounts shown have been arrived at by applying the Funding Provisions (Section 11, beginning on page 24 of the draft) contained in the proposed Bill, to the estimated FY 1985 expenditures (rounded to the nearest million [$M]) for and of St. Elizabeths Hospital and the District of Columbia Mental Health Services Administration.

Thus, the formula proposed in Sec.11(a)(2)(E) (beginning on page 29 of the draft), would result in the following approximate configuration:

TOTAL AMOUNT ESTIMATED TO BE REQUIRED BY THE CORPORATION		$145M
Subtract		
TOTAL AMOUNT ESTIMATED TO BE RECEIVED BY THE CORPORATION FROM SOURCES OTHER THAN THE FEDERAL AND DISTRICT[1] GOVERNMENTS (i.e. Medicaid, other reimbursements, grants, ect.)	$24M	
TOTAL PAYMENT FROM THE DISTRICT OF COLUMBIA TO ST. ELIZABETHS	$36M	
TOTAL AMOUNT EXPENDED FOR AND THROUGH THE DISTRICT OF COLUMBIA MENTAL HEALTH SERVICES ADMINISTRATION	$17M	
	$77M	$ 77M
REMAINDER to which Sec.11 (a)(2)(E)(ii) would apply		$ 68M

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[1] Although the wording "and District" is not included in the draft, the context requires such an interpolation.

In the following charts, the percentage figure used for Federal patient responsibility is for the proposed entire unified system, not just for patients at St. Elizabeths. In addition, inflation has not been factored into the projections for the "out years", nor have any potential changes in the total Corporation budget been taken into account, as the purpose of this presentation is only to show the current-dollar relative financial burdens that would result from implementation of the proposed Bill.

If the Corporation determined [pursuant to Sec.11 (a)(2)(B)] that the Federal Government is responsible for 50 percent of the Corporation's patients, then:

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1985	$ 68 M	$ 53 M	$ 24 M	$145M
FY 1986	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1987	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1988	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1989	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1990	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1991	$ 60.5M	$ 60.5M	$ 24 M	$145M

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1992	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1993	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1994	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1995	$ 60.5M	$ 60.5M	$ 24 M	$145M
FY 1996+	$ 60.5M	$ 60.5M	$ 24 M	$145M

If Federal responsibility is set at 40 percent, then:

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1985	$ 68 M	$ 53 M	$ 24 M	$145M
FY 1986	$ 54.4M	$ 66.6M	$ 24 M	$145M
FY 1987	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1988	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1989	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1990	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1991	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1992	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1993	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1994	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1995	$ 48.4M	$ 72.6M	$ 24 M	$145M
FY 1996+	$ 48.4M	$ 72.6M	$ 24 M	$145M

If Federal responsibility is set at 30 percent, then:

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1985	$ 68 M	$ 53 M	$ 24 M	$145M
FY 1986	$ 54.4M	$ 66.6M	$ 24 M	$145M
FY 1987	$ 47.6M	$ 73.4M	$ 24 M	$145M
FY 1988	$ 40.8M	$ 80.2M	$ 24 M	$145M
FY 1989	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1990	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1991	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1992	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1993	$ 36.3M	$ 84.7M	$ 24 M	$145M

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1994	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1995	$ 36.3M	$ 84.7M	$ 24 M	$145M
FY 1996+	$ 36.3M	$ 84.7M	$ 24 M	$145M

If Federal responsibility is set at 20 percent, then:

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1985	$ 68 M	$ 53 M	$ 24 M	$145M
FY 1986	$ 54.4M	$ 66.6M	$ 24 M	$145M
FY 1987	$ 47.6M	$ 73.4M	$ 24 M	$145M
FY 1988	$ 40.8M	$ 80.2M	$ 24 M	$145M
FY 1989	$ 34 M	$ 87 M	$ 24 M	$145M
FY 1990	$ 27.2M	$ 93.8M	$ 24 M	$145M
FY 1991	$ 24.2M	$ 96.8M	$ 24 M	$145M
FY 1992	$ 24.2M	$ 96.8M	$ 24 M	$145M
FY 1993	$ 24.2M	$ 96.8M	$ 24 M	$145M
FY 1994	$ 24.2M	$ 96.8M	$ 24 M	$145M
FY 1995	$ 24.2M	$ 96.8M	$ 24 M	$145M
FY 1996+	$ 24.2M	$ 96.8M	$ 24 M	$145M

If Federal responsibility is set at 10 percent, then:

IN	THE FEDERAL GOVERNMENT WOULD PAY	THE DISTRICT OF COLUMBIA WOULD PAY	MEDICAID AND OTHER	TOTAL
FY 1985	$ 68 M	$ 53 M	$ 24 M	$145M
FY 1986	$ 54.4M	$ 66.6M	$ 24 M	$145M
FY 1987	$ 47.6M	$ 73.4M	$ 24 M	$145M
FY 1988	$ 40.8M	$ 80.2M	$ 24 M	$145M
FY 1989	$ 34 M	$ 87 M	$ 24 M	$145M
FY 1990	$ 27.2M	$ 93.8M	$ 24 M	$145M
FY 1991	$ 20.4M	$100.6M	$ 24 M	$145M
FY 1992	$ 13.6M	$107.4M	$ 24 M	$145M
FY 1993	$ 13.6M	$107.4M	$ 24 M	$145M
FY 1994	$ 13.6M	$107.4M	$ 24 M	$145M
FY 1995	$ 13.6M	$107.4M	$ 24 M	$145M
FY 1996+	$ 12.1M	$108.9M	$ 24 M	$145M

MEMBERS OF GWOGFOSS

The Adelante-Advocacy Center

The Adelphi Friends Meeting, Peace and Social Order Committee

The American Federation of Government Employees, Council 211, AFL-CIO

The American Federation of State, County and Municipal Employees, Council 20, AFL-CIO

District of Columbia Services for Independent Living, Inc.

The Fairfax Education Association

The Fairfax Unitarian Church, Social Action Committee

The Gray Panthers of Metropolitan Washington

The Gray Panthers of Montgomery County

The Greenbelt Peace Committee

The Hotel and Restaurant Employees Union, Local 25, AFL-CIO

The Metropolitan Washington Council, AFL-CIO

The Metropolitan Washington Planning and Housing Association

The Montgomery County Federation of Teachers, Local 1670, A.F.T., AFL-CIO

The Northern Virginia Branch of The Washington Urban League, Inc.

The Prince George's County Gray Panthers

Rehabilitation Opportunities, Inc.

The United Food and Commercial Workers, Local 400, AFL-CIO

Virginia Public Employees, Council 30, American Federation of State, County and Municipal Employees, AFL-CIO

The Washington Peace Center

The Washington Teachers' Union, Local 6, A.F.T., AFL-CIO

The Washington Urban League, Inc.

Wider Opportunities for Women

STATEMENT OF GEORGE FRAIN

I am George Frain, I reside at 1789 Lanier Place, N.W., and I have been a citizen of the District of Columbia since 1942. I am Vice President of the Federation of Citizens Associations of the District of Columbia, secretary of the 18th and Columbia Road Business Association, and a member of the Board of the Adams Morgan Community Development Corporation, and an officer-delegate of the Kalorama Citizens Association. I am senior columnist for The InTowner, a widely-read journal circulated in the Adams Morgan, Mt. Pleasant, Dupont and Logan circles, the Sheridan/Kalorama, and Woodley & Cleveland Park areas.

These activities keep me in touch with a great many people.

I find very wide concern about the city's homeless people. At the present time there is a law suit by ~~rhubarb, or heated discussion or argument between~~ Mitch Snyder against ~~and~~ Federal officials over whether $5 million is to be spent on the facility Mitch Snyder runs at Second Street NW between C and D streets, or $10 million. Mitch Snyder is holding out for the $10 million, while the Federal officials say $7. Million ~~$5 million~~ is all they are committed to.

Senator Arlen Specter, chairman of the Senate Appropriations Subcommittee on the District of Columbia, said he was quote "appalled" by conditions in the shelter run by Mitch Snyder. This was in January, and a newspaper reported that Senator Specter found only two toilets working in the whole building where 800 homeless are living.

According to the newspaper (Washington Times, Jan. 24, 1985) "Senator Specter urged officials to repair toilets, at the least." But the homeless need more than that.

During his subcommittee hearing, Senator Specter said the plight of mentally ill homeless people on the District's streets could adversely affect the planned transfer of most of the facilities of St. Elizabeths Hospital from federal government control to the District. D.C. doesn't have the funds needed to run a model mental hospital, and the schizophrenics and acute and chronic alcoholics will suffer.

Mitch Snyder, head of the Community for Creative Non-Violence, characterized some of the shelters in Washington as "rat holes", and he said the District had 5,000 to 15,000 homeless people, many of them mentally ill. This is a major problem.

I urge your Appropriations Subcommittee on the District of Columbia to take whatever steps you can to reverse the unfortunate policy to "de-institutionalize" the mentally ill in the District of Columbia, which has resulted in thousands of mentally disturbed people roaming the streets in the coldest weather, trying to find warmth by sleeping over steam vents of government buildings. Some just freeze.

The Washington Times of May 21, 1985 reported the president of the American Psychiatric Association as saying:

> "With the knowledge that state hospitals required 100 years to reach their maximum size, the precipitous attempt to move large numbers of their charges into settings that did not in fact exist must be seen as

> incompetent at best and criminal at worst...The chronic mentally ill patient has had his locus of living and care transferred from a single lousy institution to multiple wretched ones."

Ralph Nader's Health Research Group in a recent study found no less than 74 percent of the homeless in Washington, D. C., were either schizophrenic or alcoholic. The HRG study concluded that there are approximately 1,200 schizophrenics on the streets of Washington--more than there are in St. Elizabeths, the mental hospital that serves the Nation's Capital.

With all due respect to Senator Arlen Specter, I don't think the problems of the city's homeless can be solved by fixing two toilets in Mitch Snyder's facility which Mr. Snyder described as a "rathole", a term he applied to others, as well.

At the very least, the Schizophrenics and Chronic Alcoholics should be moved out of Mitch Snyder's rest home, and the other community-based facilities, into the city's hospitals and St. Elizabeths where they could get the care of doctors and mental health experts, and trained and caring nurses.

After all, it was the Congress acting on the basis of President Kennedy's 1963 speech which started the move toward de-institutionalization, and it is the Congress which should now measure up and help these mentally ill -- and not leave the task to Mitch Snyder and others who do not provide their charges with the doctors and expert care they so desperately need when they are schizophrenics and chronic alcoholics.

Even with a $40 million surplus, the City Council and Mayor Barry have not suggested that any of this surplus be applied to providing medical and other expert care and trained nurses to take care of the city's homeless and chronic alcoholics. City Council Chairman, instead, suggested that this surplus be returned to the taxpayers. Getting the homeless out of sight isn't the answer.

The Washington Times of January 24, 1985 made the city's views clear when it reported quote:

> "It is a federal government facility"[Mitch Snyder's warehouse for human beings who are schizophrenics and chronic alcoholics], said Kathy Williams, Mr. Barry's spokeswoman. "The Federal government should be contacted about the conditions there."

Senator Arlen Specter said that the District and other jurisdictions should change the laws to make it easier to commit mentally ill persons, according to a report published in the Washington Post of January 24, 1985. I include the Washington Post and Washington Times articles I have referred to as part of my remarks, because they demonstrate and document the broad public concern with the city's homeless and the complexity of the problems they present, and the plight they are in.

THE $500,000 INCREASE IN THE FY 1986 BUDGET OF THE COMMISSION ON ARTS AND HUMANITIES

There is a $500,000 increase in the FY 1986 budget for "major private (nonfederal) arts institutions" which is justified on page 60-8 of Volume II of the city's budget.

This is a spectacular increase for this small agency, the budget of which is to be $1,673,000 and last year was $1,127,000. What major arts institutions are to be aided with this $500,000? I submit as part of my remarks the witness list on the hearing on the Commission for the Arts and Humanities budget for FY 1986, the hearing was held by the Human Services Committee chaired by Chairperson Polly Shackleton on February 22, 1985 and not a single "major private (nonfederal) art institution" appeared and testified. This $500,000 should be reprogrammed to help the city's homeless. What will the city's homeless think of this Congress if it approves this huge budget increase which the city's major art institutions didn't testify for?

Next year, for example, it might be $10 million, $15 million the third year, and so on. It is doubtful that the National Symphony and the Washington Opera need the funds which they will get if this $500,000 is appropriated by the Congress, or that it will accomplish the aims set forth. They appeal directly to Congress for funding.

There is nothing in the hearing record of the Committee on Human Services to indicate what groups will receive these funds, and there is no listing of the so-called "major private (nonfederal) arts institutions" which will benefit from this $500,000 which your Subcommittee is called on to approve. Which qualify, and which don't?

And, based on the huge sums appropriated by the Appropriations Subcommittee on the Department of the Interior and Related Agencies to the National Symphony Orchestra and the Washington Opera Society in recent years which never provided their resources and programs "to reach the lives of the elderly, the handicapped, the institutionalized, citizens living in economically and culturally underserved wards, and the District's youth", how can we be assured that these "major private (nonfederal) arts institutions" will provide their huge resources for these needy and culturally deprived people if the $500,000 is appropriated by Congress in the FY 1986 D. C. Budget for the D. C. Commission on the Arts and Humanities as you are requested to do?

HOW MUCH DID THESE ARTS INSTITUTIONS RECEIVE FROM CONGRESS IN THE YEARS 1981-1985

Did you know that the National Symphony was granted at least $5,470,000 and the Washington Opera Society received $1,985,000 for a grant total of $7,455,000 in the period FY 1981-FY 1986 from the Congress and the National Endowment for the Arts?

Did you know that these favored major art institutions received these funds "for activities related to their responsibilities as resident entitities of the [Kennedy] Center" and as "resident orchestra of the Kennedy Center" and "resident opera company of the Kennedy Center"? Doesn't this make them "federal" arts groups? And doesn't this disqualify them from receiving any part of the $500,000 of D.C. funds?

It is I think significant, and I hope you will agree, that during the years these two major orchestra and opera companies received these huge grants that they toured overseas but never repeat never toured into the city's wards to serve the city's elderly, the handicapped, the institutionalized, citizens "in economically and culturally underserved wards, and the District's youth."

The Washington Opera went to Edinburgh, Scotland, in the fall of 1984 shortly after receiving $500,000 in a direct grant thanks to the Appropriations Subcommittees on the Interior of the Senate and House.

And the Washington Opera went to Israel in the Spring of 1985.

In both cases the Washington Opera presented Gian Carlo Menotti's "The Telephone" and "The Medium" to demonstrate the advanced state of culture in this country.

Am I naive in believing that Europeans would have been more impressed if the the Congress had insisted that the Washington Opera not use tax funds to propagandize the Scots and the Israelis as to the advanced state of our cultural achievements as demonstrated by the presentation of these two mediocre operas, and had insisted that the Washington Opera present the world's great operas in the city's wards here in the Nation's Capital? The world will be most impressed by how we treat our own poor families.

When foreign opera companies come to the Kennedy Center, even when the Metropolitan Opera and the New York City Opera companies come of Washington, D. C. they present operas which are a great deal more significant than "The Telephone" and "The Medium", they present the world's great operas here.

This is what the Washington Civic Opera did for 26 years up to 1981, it brought the world's great operas free to the elderly, the handicapped, and citizens living in economically and culturally underserved wards, and the District's youth, and it did it for less than $100,000 whereas the Washington Opera Society has gotten $1,985,000 from the Congress (see my testimony on "The Poor People's Cultural Programs", Hearings on FY 1985 D.C. Budget, Part 2, pages 2302-2325, and additional witnesses on pages 2512a-2512n). But the Poor People's Cultural Programs were killed by the Senate and House Appropriations Subcommittees in the FY 1981 D.C. Budget, and your Subcommittee should insist on funding them this year, for Congress this would be a real bargain.

Even a totally blind person could see there is more justification for funding "The Poor People's Cultural Programs" than taxing poor people to subsidize the National Symphony Orchestra and the Washington Opera Society which are so largely the cultural programs of choice of the rich and powerful elite of this city & its suburbs. Why don't you ask the wealthy suburbs To contribute to the National Symphony and Washington Opera?

IS THE $500,000 REALLY NEEDED? IN VIEW OF THE NEEDS OF THE HOMELESS CAN THE DISTRICT JUSTIFY GRANTS TO THE NATIONAL SYMPHONY ORCHESTRA AND WASHINGTON OPERA SOCIETY

It is curious that the FY 1986 D. C. Budget contains not one word about the huge grants to the National Symphony Orchestra and the Washington Opera Society made directly to these cultural institutions by the Congress, and the National Endowment for the Arts. I will try to document what I have been able to learn, and I urge you to make a request for a study of just how much of the nation's tax funds has gone to these two arts institutions, compared with Federal grants to other symphony orchestras and opera companies these two local companies have gotten the most from Congress.

I think this is important, because through such a request for a study your Subcommittee can determine if the $500,000 for "major private (nonfederal) arts institutions" is really needed, or if that huge sum can be diverted to such vital issues as helping to provide for the homeless, the schizophrenics, and the chronic alcoholics who are out there wandering about the streets in all kinds of weather, in the hot summer sun, and the coldest winter weather.

The Washington Times on March 27 and April 5 published correspondence between our new at-large Councilmember Carol Schwartz and me, she wrote that she proposed an overall cut of $100 million in the District's fiscal 1986 budget. She went on in her letter to state (I include this correspondence here as part of my remarks) that:

> "The 1986 budget flows freely for all. This budget is 8 percent or $168.5 million higher than the 1985 budget and 250 percent higher than the first home-rule budget years ago. Not coincidentally, income taxes on our people are the second highest in the nation.
>
> "I proposed a cut in the budget and in our income taxes because I believe such a cut was possible and necessary. Our government is too big and too expensive. Taxation in the District as gone well beyond responsible grounds."

With regard to the $500,000 increase for the arts in the FY 1986 D.C. Budget Councilmember Carol Schwartz stated in her letter to the Washington Times that--

> "While it is true that I did not ask for a specific cut in the arts program, I also did not propose the increase. The increase in that budget being objected to is part of the mayor's budget, not mine. I was the only member proposing a cut in the budget and ultimately the only member voting against that budget because no such cut was made."

HOW MUCH HAS THE CONGRESS GRANTED THE NATIONAL SYMPHONY AND WASHINGTON OPERA?
FEDERAL GRANTS TO THE NATIONAL SYMPHONY AND WASHINGTON OPERA PINPOINTED

It is curious that the City Council, the Commission on the Arts and Humanities, and Mayor Barry haven't fully informed you of how the Congress has the National Symphony Orchestra and the Washington Opera Society. Here is what I have discovered, it may not be the entire answer, which you should consider in connection with this $500,000 request:

1. The National Capital Region Arts and Cultural Affairs

I include the legislation from the Congressional Record of October 10, 1984 which reads in part as follows--

> "For the fiscal year ending September 30, 1986, for a program to support artistic and cultural programs in the National Capital region, $5,000,000, to remain available until expended: Provided, That there is hereby established under the direction of the National Park Service a program to support and enhance artistic and cultural activities in the National Capital Region... The contractual amounts required for the support of Ford's Theater and Wolf Trap Farm Park for the Performing Arts shall be available within the amount herein provided without regard to any other provisions of this section."

The $5,000,000 was forward funded, and it is expected that strong efforts will be made -- a real push -- by the metropolitan area's cultural organizations to see that this $5,000,000 is provided and the program authorized to be funded by the legislation is carried out, and the $5 million not be diverted to other uses.

The Washington Post published an article by Mary Battiata on April 27, 1985 which should be of great interest to you with regard to the $500,000 requested for the Commission on the Arts and Humanities in the FY 1986 D. C. Budget, I include this article and I call your attention particularly to the concluding paragraphs and I quote them here--

> "Washington ranks second among nine large American cities in the amount of private money raised by its major private arts institutions but ranks at the bottom in funding from local governments, according to a new study sponsored by the National Endowment for the Arts and the Eugene and Agnes E. Meyer Foundation.
>
> * * * * *
>
> "The D.C. Commission on the Arts and Humanities is the only source of nonfederal government funding available. Its annual budget is approximately $1.5 million.
>
> "The study suggests that federal support be increased and institutionalized to break an annual ritual in which individual Washington institutions make funding pleas directly to Congress. In an effort to streamline that process, Congress last year approved a $5 million fund for those institutions, but the Reagan administration has proposed transferring that money to the Bureau of Indian Affairs.
>
> "Officials from Washington's cultural institutions have long argued that both Congress and private corporations should foot a greater portion of maintaining the arts in the nation's capital.
>
> "'This is the national capital and it deserves to have the very finest performing arts groups the country can put forth,' said Arena's Fichandler. 'There are a lot of national corporations that should be doing much more here. They have their lobbyists here, they benefit from bringing clients here, but they seem to take a very narrow view of what their responsibilities are.'"

The solution to their funding problems,by going directly to the Senate and House Appropriations Subcommittees on the Interior and Related Agencies,which the National Symphony and Washington Opera has pursued has paid off in a big way. No other symphony orchestra or opera company in the nation have been able to raise funds this way.

Other symphony orchestras and opera companies have to get their funds through the National Endowment for the Arts. But, whereas, these other opera companies and symphony orchestras have gotten only $250,000 to $280,000 from the National Endowment for the Arts, the National Symphony Orchestra received a grant of $900,000 and the Washington Opera received $500,000 on October 10, 1984. These grants require the National Symphony and the Washington Opera to raise at least three times these amounts in matching funds during the next three years.

Also, on October 10, 1984 the Congress included this language in the appropriation for the Smithsonian Institution for FY 1985--

> "$350,000 to be made available to the trustees of the John F. Kennedy Center for the Performing Arts for payment to the National Symphony Orchestra and $350,000 for payment to the Washington Opera Society for activities related to their responsibilities as resident entities of the Center."

NATIONAL SYMPHONY AND WASHINGTON OPERA SOCIETY LOBBYING PAYS BIG DIVIDENDS

Thus we see that on October 10, 1984 the lobbying by the National Symphony and the Washington Opera Society paid big dividends, as follows--

National Symphony Orchestra......	$350,000 in direct grant by Congress $900,000 from National Endowment for the Arts

Plus part of $5 million of the new National Capital Region Arts and Cultural Affairs provided by Congress in FY 1986 Federal budget.

Washington Opera Society	$350,000 in direct grant by Congress $500,000 from National Endowment for the Arts

Plus part of $5 million of the new National Capital Region Arts and Cultural Affairs provided by Congress in FY 1986 Federal budget.

ART LOBBYING PAYS MILLION DOLLAR DIVIDENDS TO NATIONAL SYMPHONY AND WASHINGTON OPERA

The Washington Post on December 22, 1982 reported that--(copy of report attached):

> "The continuing resolution signed by President Reagan yesterday provides funds for a wide array of arts activities locally and nationally including ... a $1 million bonus for the National Symphony Orchestra... The Washington Opera was a big loser yesterday. The Senate version of the bill had included a $1 million grant for the opera, to be given on a matching basis, but the funds were killed in conference.
>
> "The bill signed yesterday also appropriates $250,000 on a matching basis for the National Symphony Orchestra to perform a Fourth of July Concert on Capitol Hill and have it televised. This event was also funded in 1981 but not this past last July 4."

The Washington Post on November 19, 1982 reported (copy of report attached) that--

> "In 1981 the federal government had to bail it [National Symph Orchestra] out with another $1 million grant."

The National Endowment for the Arts announced that in 1982 it had granted $220,000 to the National Symphony Orchestra and $135,000 to the Washington Opera.

Here, then, is what the National Symphony got by its lobbying efforts in Congress:

FY 1981 Federal budget ...	$1,250,000	in direct grant from Congress
FY 1982 Federal budget ...	220,000	from National Endowment for the Arts
FY 1983 Federal budget ...	$1,250,000	in direct grant from Congress
FY 1984 Federal budget ...	500,000	Grant from Congress in Smithsonian budget
FY 1985 Federal budget ...	350,000	Grant from Congress in Smithsonian budget
	900,000	Grant from National Endowment for the Arts
FY 1986 Federal budget ...	$1,000,000	Estimated grant from the new National Capital Region Arts and Cultural Affairs budget in the National Parks Service forward funding.
Grant Total:	$5,470,000	

Here is the "take" of the Washington Opera from its lobbying of Congress:

FY 1982 ... $135,000 from National Endowment for the Arts

FY 1983 - None. The Washington Post (Dec. 22, 1982) reports that the Washington Opera was a "big loser yesterday. The Senate version of the bill [the continuing resolution signed by President Reagan on December 21, 1982] included a $1 million grant for the Washington Opera but the funds were killed in conference.

FY 1984 ... $500,000, a result of Senate debate on September 21, 1983. This was provided in the budget of the Smithsonian Institution .

FY 1985 ... $350,000 in Smithsonian Institution budget (see Congressional Record October 10, 1984 excerpt attached).

FY 1986 ...$1,000,000 Estimated grant from the new National Capital Region Arts and Cultural Affairs budget in the National Parks Service forward funding.

Total: $1,985,000

CONCLUSION

1. I believe that your Subcommittee has a duty and responsibility to see that the National Symphony and Washington Opera, which has received such vast funds from the Congress serve the community in turn.

There are precedents for this. If you turn to my testimony before you last year, on the FY 1985 D. C. Arts Commission Budget, you will find on page 2309 of Part 2 of your published hearings, that I cited a number of examples of community involvement by the Milwaukee, Cleveland, New Mexico, New Orleans, and Chicago symphony orchestras which was a requirement of their grants by the National Endowment for the Arts.

In other words, the goals of community involvement that are given by the D. C. Commission on the Arts and Humanities for justification of the $500,000 appropriation could be obtained simply by writing a letter pointing to the requirements of the National Endowment for the Arts with regard to these other symphony orchestras -- the letter should be addressed to Hon. Sidney Yates, Chairman, the Appropriations Subcommittee on the Interior and Related Agencies.

In this way, the $500,000 in the D. C. Budget could be saved and put to more vital and more basic purposes, such as helping the homeless about whom the entire Congress feels very deeply.

2. Your Subcommittee could serve the city's culturally deprived by funding reactivation of the Washington Civic Opera -- see my testimony on the FY 1985 D. C. Budget last year in Part 2 of your published hearings, pages 2302-2325, and supporting testimony on pages 2512a-2512n. All that would be required to bring opera and symphony classics, and training for young people to prepare them for music careers, and careers in the many fields of opera and theater production, is less than $100,000. Such a step would be only fair.

3. It doesn't make sense to throw another $500,000 or a substantial portion of that amount to the National Symphony and the Washington Opera to do something the National Endowment for the Arts requires of its grantees, when these two major arts institutions, the National Symphony and the Washington Opera, have already gotten a grant total of $7,455,000 from the Congress and the National Endowment for the Arts without any requirements as to community involvement in the Nation's Capital itself.

4. With the Congress cutting back in many areas in order to reduce the huge deficits, and in view of the desperate plight of the city's poor families and the homeless, it doesn't make sense to enlarge the budget of the Commission on the Arts and Humanities by $500,000, does it?

5. Why shouldn't the suburbs with their large numbers of patrons of the National Symphony and Washington Opera be called on by your Subcommittee and the Congress to contribute to these major arts institutions above and beyond the cost of their tickets?

6. Why should low-income taxpayers be required by Congress to pay by their taxes for the National Symphony and Washington Opera which are so largely patronized by the wealthy and powerful which this $500,000 budget request, if approved by the Congress, will require of the low-income taxpayers of the District of Columbia?

7. I am enclosing a Washington Post report of November 13, 1984 of a fund drive for the National Symphony to establish a $20 million endowment. This fund drive was praised by President Reagan. Why not let everyone, including the poor, contribute to this fund drive if they want to, and not penalize them by requiring that their tax funds be used to subsidize the National Symphony and Washington Opera?

That I am not alone in my views, as you might think, I submit a news report by the Washington Post of August 30, 1984 regarding the Edinburgh, Scotland arts festival which the Washington Opera attended in 1984 to present "The Medium" and "The Telephone" by Gian Carlo Menotti.

I would like to close my testimony today by calling your attention to the action of the Edinburgh City Council as reported by the Washington Post:

> "But while city taxpayers gave more than a quarter of the $2.6 million budget for the 1984 festival, the council says the event is meaningless to many.
>
> "Future festivals would have to embrace the working class, or else the council would 'pull the plug', new council leader Alex Wood told the festival society in July."

Is there as much concern in this Congress and in this Subcommittee about the poor and low-income families as was demonstrated by the Edinburgh City Council in this Washington Post report?

I would certainly hope so, but I have yet to see any demonstration of it in any meaningful way.

Thank you very much for giving me the privilege of testifying before you.

[From the Washington Times, Jan. 24, 1985]

SHOCKED, SENATOR SEEKS IMPROVEMENT AT SHELTER

By Rupert Welch
THE WASHINGTON TIMES

Sen. Arlen Specter, R-Pa., yesterday said he was "appalled" by conditions in a Washington shelter for the homeless and sent a letter to D.C. Mayor Marion Barry and Secretary of Health and Human Services Margaret Heckler urging immediate improvements.

Sen. Specter, chairman of the Senate Appropriations D.C. subcommittee, visited a shelter on Second Street NW between C and D streets after a hearing on problems of mentally ill homeless people.

During the hearing, one witness called the shelter a "rat hole."

About 135 men were in the shelter at the time of the visit, an aide said, but the number increases to about 800 at night.

"There were only two toilets working in the whole building," the aide said. The shelter, operated by the Community for Creative Non-Violence, is in an old "temporary building" that used to house part of Federal City College.

Sen. Specter urged officials to repair toilets, at the least.

"It is a federal government facility that they have provided," said Kathy Williams, Mr. Barry's spokeswoman. "The federal government should be contacted about the conditions there."

During his subcommittee hearing, Sen. Specter also said the plight of mentally ill homeless people on the District's streets could adversely affect the planned transfer of most of the facilities of St. Elizabeths Hospital from federal government control to the District.

During the hearing, Mitch Snyder of the Community for Creative Non-Violence characterized some of the shelters in Washington and Philadelphia as "rat holes."

He told Sen. Specter the District had 5,000 to 15,000 homeless people, many of them mentally ill.

Dr. William Prescott, superintendent of St. Elizabeths, said he would like to see some relaxation of the standards for committing mentally ill persons to hospitals but admitted that St. Elizabeths' 1,700-bed capacity left little room for a large influx of patients.

[From the Washington Post, June 5, 1985]

D.C. Advocate for Homeless Seeks Meeting With Reagan Over Shelter

By Sandra Evans

Washington Post Staff Writer

Advocate for the homeless Mitch Snyder, charging that federal officials are not fulfilling President Reagan's promise last fall to renovate a homeless shelter near Capitol Hill, delivered a letter of protest to the White House yesterday and asked for a meeting with Reagan to discuss his concerns.

"Your promise to us, to the residents of this shelter, and to the homeless of America has been broken," Snyder said in the letter addressed to Reagan.

Reagan approved an agreement last fall to renovate the shelter, ending a dramatic and well-publicized 51-day hunger strike by Snyder, but since then Snyder's estimate on how much a proper rehabilitation will cost has doubled from $5 million to $10 million.

The current impasse between Snyder and federal officials is only the latest in a cyclical love-hate relationship that has developed between the radical advocate for the homeless and the conservative Reagan administration over the shelter at Second and D streets NW.

What started as a plea by Snyder for temporary use of the run-down, federally owned building as a cold-weather shelter two winters ago has become a demand for $10 million in renovations to make it into a model shelter for the homeless.

Harvey Vieth, chairman of the federal Task Force on Food and Shelter, said yesterday that the General Services Administration is ready to start the renovation any time and that the federal government plans to spend up to $5 million as promised to make necessary repairs.

"We are absolutely living up to our commitment, and I don't know what Mitch's problem is," Vieth said. "He wants twice [the $5 million] now, and so I think there is a problem."

At the White House, deputy press secretary Larry Speakes said the administration has been "very responsive to the needs of the homeless in Washington, and [we] particularly worked with Mitch Snyder." He said he did not know if the president had received the letter.

Snyder said federal officials have refused to develop any detailed specifications for the work to be done and he charged that they were trying to get away with doing a "patch-up" job.

Vieth said GSA wants to save time by designing as the work proceeds. He said GSA and Snyder are not that far apart on their ideas of what should be done but that Snyder's design calls for such things as individual cubicles that GSA does not intend to provide.

Vieth said the rehabilitation needs to last for only five to 10 years, because the shelter is not intended to be a permanent institution.

Snyder originally got the federal government to agree to turn over the building, which used to be part of the Federal City College campus, by promising to take responsibility for running and maintaining it during the winter months.

When the 800-bed shelter opened in January 1984, Health and Human Services Secretary Margaret M. Heckler was on hand for a celebration of the joint effort between the Reagan administration and Snyder's group, the Community for Creative Non-Violence.

But by spring, the CCNV protested the Reagan administration's plan to go ahead with an auction of the building, demanding that it stay open in the warm months as well, and Reagan ordered a delay of the sale. Snyder started a hunger strike in September that resulted in the president's agreement to the renovation, and he and Vieth since have been trying to negotiate how to accomplish it.

Snyder said if the president does not order officials to make the renovations the CCNV wants, the group will go to federal court to try to force the federal government to make emergency repairs and to staff the facility.

[From the Washington Times, May 21, 1985]

WHO ARE AMERICA'S HOMELESS?

The plight of the homeless in American society is a national scandal — but not the one that everybody thinks it is.

Ever since homeless-advocate Mitch Snyder staged a hunger strike before last year's election, the problem of vagrants sleeping in hallways, parks, and city shelters has been a major topic of political concern. In the usual scenario, these unfortunates are thought to be victims of the Reagan administration, which stands accused of creating economic hardship, then turning a blind eye to the casualties.

A series of studies by the General Accounting Office, the Department of Housing and Urban Development, and Ralph Nader's Health Research Group (HRG) tell us a dramatically different story. The homeless problem is indeed the handiwork of the federal government, in a very direct and obvious way. But the trouble has little to do with Ronald Reagan and far predates his tenure in the White House.

There are disputes about the actual number of the homeless currently living in shelters — or, even worse, sleeping on grates and city streets — but two facts concerning them are pretty well established: there are far more of these unfortunates at large among us than there used to be, and a majority of them are suffering from mental disorders — mainly schizophrenia and chronic alcoholism.

These two factors are closely interrelated. Their linkage dates from the 1963 decision of federal authorities, assisted by the courts, to promote "de-institutionalization" of patients in mental health facilities. This was chiefly accomplished by legislation subsidizing "community-based" mental health care with federal dollars, as opposed to care in traditional mental institutions paid for by the states.

In response to these incentives, tens of thousands of schizophrenics and other mentally troubled people were dumped out of state institutions. From 1955 to 1980, the population of these hospitals fell by more than 75 percent, from 559,000 to 138,000. The meaning of this change in five of our most populous states is suggested by the report of the Nader-connected HRG. In 1955, New York, California, Michigan, Ohio, and Massachusetts among them had almost 200,000 mental patients hospitalized; by 1980, they had fewer than 40,000.

Whatever may be said about de-institutionalization otherwise, it has thus resulted in tens of thousands of mentally troubled people roaming the streets unsupervised, and inadequately cared for. Those released were supposed to be treated in community mental health clinics, but these have not developed with the speed or scope originally intended. As the president of the American Psychiatric Association observes:

"With the knowledge that state hospitals required 100 years to reach their maximum size, the precipitous attempt to move large numbers of their charges into settings that did not in fact exist must be seen as incompetent at best and criminal at worst . . . The chronic mentally ill patient has had his locus of living and care transferred from a single lousy institution to multiple wretched ones."

That this dumping of the mentally ill is a major cause of the homeless problem is persuasively argued by two blistering studies from the HRG. In one analysis, the Nader researchers found no less than 74 percent of the homeless in Washington, D.C., were either schizophrenic or alcoholic. They also concluded that there are approximately 1,200 schizophrenics on the streets of Washington — more than there are in St. Elizabeth's, the mental hospital that serves the capital.

The HRG analysis concludes: "There are now more patients with schizophrenia living on the streets and in public shelters than there are in state mental hospitals. The schizophrenic patients on the streets and in the shelters are a direct consequence of well-meaning but poorly implemented federal and state policies on de-institutionalization. The primary reason for the failure of de-institutionalization has been the failure of Community Health Centers to provide care for schizophrenics; other errors compounded the disaster."

The basic trouble, in other words, isn't one of economic policy. More and better shelters for the homeless are desirable, but won't solve the problem created by the misguided course of federal policy on mental health.

[From the Washington Post, Jan. 24, 1985]

D.C. RULES ON COMMITMENT AIRED ON HILL

By Sandra Evans
Washington Post Staff Writer

The mentally ill woman was on the floor of her Dupont Circle apartment with cockroaches crawling all over her when the Rev. John Steinbruck and his wife Erna found her. She wouldn't talk and she wouldn't eat.

The Steinbrucks called in the police to have her committed to St. Elizabeths mental hospital, where she had been treated before for paranoia. But when the police arrived, the officers said they could not have her committed because she did not pose an immediate life-threatening danger to herself or others, the District's standard for involuntary commitment.

The Steinbrucks, who run shelters for homeless persons in the District, are among those now calling for a change in standards to make it easier to carry out involuntary commitments here and elsewhere in the country. They say that people who desperately need help are not getting it.

"The pendulum is so far over on patients' rights that we're hurting people," Erna Steinbruck said yesterday, elaborating on her husband's testimony at a hearing on the homeless mentally ill held by the Senate appropriations subcommittee on the District.

Massive deinstitutionalization in the 1970s is often cited by social services professionals as a major reason for a large increase in the number of homeless persons seen living on grates and at shelters, and specialists estimate that about half of today's homeless are mentally ill.

This, they say, is largely a result of persons being released from institutional care without enough community support systems to help them care for themselves.

In addition, stringent involuntary commitment standards in about two-thirds of the states make it difficult

D.C. RULES ON COMMITMENT AIRED ON HILL—Continued

to force treatment on those who do not seek it, social service experts say.

The District's commitment laws make it more difficult to commit a person against his or her will than do Virginia's, where recent debate has centered on whether patients can be committed too easily and whether patients" rights are abused in the process.

David Rivers, director of the D.C. Department of Human Services, said yesterday that the city is rethinking its involuntary commitment standards as part of major changes taking place in the District's mental health care system.

The D.C. police department can seek involuntary commitment of persons who present an immediate life-threatening danger to themselves or others.

"It's a hard standard to meet," said Shannon Cockett, a D.C. police spokeswoman, in a phone interview yesterday. Police cannot commit persons simply for having chronic mental problems, she said.

Officers would take such a person to D.C. General Hospital, where a physician would determine whether the person should be taken to St. Elizabeths. The law provides a strict timetable for bringing the person before a judge to determine whether the involuntary commitment can continue.

Steinbruck, chairman of Mayor Marion Barry's commission on homelessness, testified at the hearing about the difficulties he and his wife had in getting police to commit chronically mentally ill persons, "who can sit on the steps of our church for days and weeks, with open sores, deteriorating."

Sen. Arlen Specter (R-Pa.), the subcommittee chairman, said after yesterday's hearings that the District and other jurisdictions should change the laws to make it easier to commit mentally ill persons.

"In our effort to deinstitutionalize the mentally ill, we have ended up hurting them more than helping them," Specter said.

Dr. James Talbott, president of the American Psychiatric Association, testified that in addition to mental illnesses with immediate life-threatening dangers, a third standard of "grave disability" should be added as a legal basis for involuntary commitment.

Not everyone agrees the standard should be changed. Judge Gladys Kessler, presiding judge of the D.C. Superior Court family division, said at the hearing that she believes the "shocking" example of the woman lying in a catatonic state in her Dupont Circle apartment would fit the court's standards for commitment as a danger to herself.

Mitch Snyder, spokesman for the Community for Creative Non-Violence, an advocacy organization for the homeless that runs an 800-bed shelter on Capitol Hill, said there is little point in taking persons to St. Elizabeths now because the hospital's policy, he said, "is almost exclusively to send people back to the streets" after a short stay.

The Steinbrucks say they have had to resort to "creating incidents" by baiting sick persons into acting out in front of policemen, so officers have a basis for commitment. The paranoid woman, a college graduate who was married to a lawyer and has four grown children, is still sick, and with no home of her own now is staying with a friend who does not know how to handle the situation, Erna Steinbruck said. Others are living on the street.

"The people who are dying in front of us," she said, "they have to be taken against their will."

[From the Washington Post, Apr. 27, 1985]

AREA SECOND IN PRIVATE ARTS FUNDS

By Mary Battiata
Washington Post Staff Writer

Washington ranks second among nine large American cities in the amount of private money raised by its major private arts institutions but ranks at the bottom in funding from local governments, according to a new study sponsored by the National Endowment for the Arts and the Eugene and Agnes E. Meyer Foundation.

"Although the base of philanthropy in Washington, particularly regarding corporations and foundations, is smaller than in other comparably sized cities . . . Washington's major cultural institutions can hold their own . . . " the study reported in a survey of cultural institutions in nine cities: Philadelphia, Boston, Detroit, San Francisco, Dallas, Houston, St. Louis, Baltimore and Washington.

The study is one of a number of statistic-stuffed tomes to appear in past weeks analyzing charitable giving at a time when the Reagan administration is seeking to cut federal arts funding.

Some local arts officials yesterday said they were surprised at Washington's lead in private fundraising.

"I guess the fact that nonprofits here have survived at all in this area with the lack of local government funds is proof that we must have had" private funding, said Patricia Fleischer, director of development for The Washington Opera.

The study compared levels of private and public giving in nine cities from 1981 through 1983 by examing donations to private art museums, symphonies, operas and dance companies.

The figures for Washington represent the aggregate private and public donations to the Corcoran Gallery of Art, Wolf Trap Farm Park, Ford's Theatre, the National Symphony, the Folger Shakespeare Library, Arena Stage, the Washington Opera, the Phillips Collection, the Capital Children's Museum and the National Building Museum.

Those for Baltimore are the aggregate of donations to the Baltimore Symphony, Center Stage, the Baltimore Opera, the Baltimore Museum of Art and the Walters Art Gallery.

The study ranks Washington second only to San Francisco in total private funds raised. Washington also outranks all but Dallas and Houston in the percentage of private donations as a part of those institutions' annual operating budgets. Private donations made up 31 percent of the total budget for all 10 Washington institutions in 1983, as opposed to 24 percent for Philadelphia and 18 percent for Boston during the same period.

But the study also shows Washington trailing far behind Detroit, Baltimore, St. Louis, Philadelphia, San Francisco, Boston, Dallas and Houston in support from local governments. The percentage of nonfederal government support for Washington's private institutions was less than 1 percent of the institutions' aggregate annual budget, while the figure for other cities surveyed averaged 17 percent.

That lag for Washington was only partially offset by recent increases in federal support appropriated by Congress.

Larry Chernikoff, the study's author and current associate director of the American Association of Museums, said his conclusions do not contradict a recent study by the Greater Washington Research Center that

AREA SECOND IN PRIVATE ARTS FUNDS—Continued

ranked Washington last among seven cities in the number of resident major corporations as well as in corporate giving and local foundation assets and grants.

"It doesn't surprise me," agreed Tom Fichandler, executive director of Arena Stage. "We work like hell to get that money." Fichandler and others said the majority of private support comes from individual rather than corporate or foundation donations.

The D.C. Commission on the Arts and Humanities is the only source of nonfederal government funding available. Its annual budget is approximately $1.5 million.

The study suggests that federal support be increased and institutionalized to break an annual ritual in which individual Washington institutions make funding pleas directly to Congress. In an effort to streamline that process, Congress last year approved a $5 million fund for those institutions, but the Reagan administration has proposed transferring that money to the Bureau of Indian Affairs.

Officials from Washington's cultural institutions have long argued that both Congress and private corporations should foot a greater portion of maintaining the arts in the nation's capital.

"This is the national capital and it deserves to have the very finest performing arts groups the country can put forth," said Arena's Fichandler. "There are a lot of national corporations that should be doing much more here. They have their lobbyists here, they benefit from bringing clients here, but they seem to take a very narrow view of what their responsibilities are."

[From the Washington Times, Mar. 27, 1985]

CUT D.C. ARTS FUNDS

Carole Schwartz, the new Republican member of the D.C. City Council, who defeated the distinguished Rev. Jerry A. Moore Jr., has called for a reduction of $100 million in Mayor Marion Barry's budget.

It is significant that she did not specify where the cuts are to be made.

The fiscal 1986 budget for the Commission on the Arts and Humanities is $1,673,000. This is up $500,000 over the fiscal 1985 budget of $1,127,000 for the commission.

Why should poor families be called on to subsidize opera and symphony concerts for the affluent, and why should the arts commission budget be increased by $500,000 when other federal and D.C. government departments and agencies are being cut back?

Perhaps Mrs. Schwartz will explain this to the poor families of the District who seldom if ever attend a symphony or opera program.

GEORGE FRAIN
Washington

[From the Washington Times, Apr. 5, 1985]

COUNCILMEMBER LONE DISSENTER ON MAYOR'S BUDGET

I read with interest your March 27 letter from George Frain, "Cut D.C. arts funds," criticizing me for not suggesting a specific budget cut for the arts while I proposed an overall cut of $100 million in the District's fiscal 1986 budget.

Forgive me, but I am confused. The writer of the letter assails me for wanting a budget cut which he in turn wants. While it is true that I did not ask for a specific cut in the arts program, I also did not propose the increase. The increase in that budget being objected to is part of the mayor's budget, not mine. I was the only member proposing a cut in the budget and ultimately the only member voting against the budget because no such cut was made.

In my memo to fellow councilmembers I called for a $100 million reduction in the mayor's proposed budget, holding his increase over the fiscal 1985 budget to the rate of inflation and reduction of our outrageously high income taxes. I did in that memo suggest general areas of reductions but left to the committee chairs and their professional staffs to make specific recommendations for reductions averaging 4.7 percent or $100 million. I did make specific recommendations in the committees on which I serve.

The standing committees did not recommend such cuts; the council made no such cuts or any tax reductions. I alone voted against the budget.

Mr. Frain claims that other D.C. agencies were cut back at the expense of the arts. That is not at all the case. The 1986 budget flows freely for all. This budget is 8 percent or $168.5 million higher than the 1985 budget and 250 percent higher than the first home-rule budget years ago. Not coincidentally, income taxes on our people are the second highest in the nation.

I proposed a cut in the budget and in our income taxes because I believe such a cut was possible and necessary. Our government is too big and too expensive. Taxation in the District has gone well beyond responsible grounds.

Unwarranted criticisms notwithstanding, I will continue to work for a reasonable fiscal policy.

CAROL SCHWARTZ
City Council of
the District of Columbia
Washington

[From the Washington Post, Oct. 11, 1984]

NEA AWARDS GRANTS

By Joseph McLellan
Washington Post Staff Writer

The National Symphony Orchestra and the Washington Opera have been given National Endowment for the Arts challenge grants totaling $1.4 million, NEA chairman Francis Hodsoll announced yesterday.

The grants were part of a total of 47 given to major arts organizations nationwide and totaling $21.1 million. The recipients were chosen from 171 applications. Washington was one of eight cities receiving more than one grant and the only city in which more than one grant went to a musical organization.

The grants of $900,000 to the NSO and $500,000 to the Washington Opera will require these organizations to raise at least three times these amounts in matching funds during the next three years. The directors of both organizations said they expect to reach and surpass these goals.

"In the near future, we hope to announce a challenge that will be more than three to one, more than a million and a half" dollars, said Martin Feinstein of the Washington Opera. "In other words, we ain't going to be content with $2 million." He said that the company already has pledges for more than the $500,000 it will be required to raise in the next year.

"To stabilize the National Symphony's fiscal condition, we will have to raise considerably more than $3 million in endowment and deficit retirement funds during the next three years," said the NSO's Henry Fogel. "We see this grant as a major stipulation of that effort as well as frankly the NEA's recognition that we have the ability to do it."

According to Hodsoll, the NEA's past grants have usually generated $7 to $8 of private giving for each dollar contributed by the federal government. He predicted that nearly $150 million will be received from the private sector in response to the latest grants.

The NSO's fund campaign is spearheaded by its president, Virginia Mars; the Washington Opera's by president David Lloyd Kreeger and chairman Chris Hunter. Both organizations plan to make announcements in the near future about their fund-raising goals.

[From the Washington Post, Nov. 19, 1982]

PANEL VOTES $1 MILLION FOR NSO

By Phil McCombs

A House subcommittee recommended yesterday that the financially troubled National Symphony Orchestra receive a $1 million grant in recognition of its special role as the "resident orchestra of the Kennedy Center."

"I couldn't be more delighted," said Leonard Silverstein, president of the symphony. He said the action shows the orchestra's "critical importance to the nation's capital as a symbol of its cultural significance."

The orchestra, a private organization, has long had money problems. It started its September to May season with a $3.2 million budgeted deficit and is still about $2 million short. In 1981 the federal government had to bail it out with another $1 million grant.

[From the Washington Post, Dec. 22, 1982]

THE ARTS FUNDING DECISIONS

By Phil McCombs

The continuing resolution signed by President Reagan yesterday provides funds for a wide array of arts activities locally and nationally, including an estimated $250,000 for the President's Committee on the Arts and Humanities, $15 million to rebuild the Filene Center at Wolf Trap and a $1 million bonus for the National Symphony Orchestra.

Budgets for the National Endowments for the Arts and Humanities remained virtually unchanged from last year's levels.

While the National Symphony Orchestra will receive its one-time grant for its role as "the resident orchestra of the Kennedy Center," the Washington Opera was a big loser yesterday. The Senate version of the bill had included a $1 million grant for the opera, to be given on a matching basis, but the funds were killed in conference.

"We lost out on a million bucks we didn't have," said Martin Feinstein, the opera's general director. "It would have helped our deficit situation enormously, but we realize that things that go on in Congress are uncertainties and you cannot count on them."

Feinstein said the opera was $730,000 in debt but hoped to be in the black within three or four years.

The money for Wolf Trap includes $7 million that was remaining to be appropriated on a $9 million grant, plus an $8 million loan. The Filene Center burned down last April, with no insurance to pay for rebuilding.

Wolf Trap Executive Director Ed Mattos said the action by Congress and the president was "a testimony to the contribution to Wolf Trap that we want to go on making, and we're grateful. We're going to work hard . . . to pay [the $8 million loan] back. We think there's a debt of honor involved and a debt of confidence."

The $143,873,000 appropriated yesterday for the arts endowment is 43 percent more than President Reagan originally requested, and it was the figure in both the House and Senate versions of the bill.

The humanities endowment will

The Arts Funding Decisions—Continued

receive $130,060,000, about 35 percent more than the president had originally requested. The House version had had an additional $500,000 for administration, but the House conferees agreed to the Senate version's lower number.

The national endowments are the federal government channels for subsidizing the arts and humanities.

The bill signed yesterday also appropriates:

- $250,000 on a matching basis for the National Symphony Orchestra to perform a Fourth of July Concert on Capitol Hill and have it televised. This event was also funded in 1981 but not this past last July 4.
- $10.3 million for the Institute of Museum Services, a federal office that gives grants to museums around the country and that the administration didn't want funded at all.
- $32,378,000 for the National Gallery of Art. The figure represents about a $400,000 increase over last year's funding figure, according to J. Carter Brown, the National Gallery's director. However, Brown said the gallery's operating budget—for special exhibitions and salaries, among other things—was cut in the action by about $400,000, with more of the total budget going into the gallery's long-range renovation program.

"I guess it's good news and bad news," Brown said. "We're sad on the operating front and we're happy on the construction because we think that's a wise move in terms of saving the government money in the long run."

[From the Washington Post, Jan. 5, 1983]

Arts Beat

By Phil McCombs

the Maryland State Arts Council, the equivalent of the D.C ommission, gets $2.3 million for next year, up from last year's $1.8 million . . . and in Virginia, the Commission for the Arts is getting $1.3 million, about the same as last year.

[From the Washington Post, Nov. 13, 1984]

Fund Drive for NSO

By Lon Tuck
Washington Post Staff Writer

A $20 million endowment drive meant to end "chaotic and chronic" budget problems plaguing the National Symphony Orchestra was announced yesterday.

More than half the money—$10.4 million—has already been pledged, said Virginia C. Mars, the president of the orchestra's board, during a news conference at the Kennedy Center.

The $20 million would nearly quadruple the orchestra's current endowment of $5.6 million and is intended to give the NSO permanent protection from the almost annual budget crises that have struck it since its founding in 1931.

To launch the drive, Mars said, the orchestra's 85-member board has pledged $9.02 million, which is believed to be the largest amount ever raised in a single effort by a symphony orchestra's board of directors.

In addition, the National Endowment for the Arts has awarded the NSO a $900,000 challenge grant, to be matched 3 to 1. Also, two pledges of $125,000 each have been received from two of the orchestra's 53 national trustees.

A letter to the board from President

Reagan was read; it congratulated the board members on the fund drive and paid tribute to music director Mstislav Rostropovich, who was also on hand for the announcement.

NSO financing has been particularly hamstrung by two problems that are more acute here than in other important orchestras.

One is the absence of regular and substantial state, county and local support—a result of the peculiar relationship over the years between the federal and D.C. governments.

The other problem has been the modesty of the orchestra's endowment by comparison with other orchestras—for example, the Pittsburgh Symphony ($43 million); the New York Philharmonic ($29 million); or the Philadelphia Orchestra ($24 million). This results partly from the lack of a major industrial base for the metropolitan Washington economy.

NSO executive director Henry Fogel said the endowment drive, which is targeted to end within two years, should "remove the atmosphere of crisis and put the National Symphony on a firm financial footing by comparison with other orchestras."

The initial goal, he said, "is to have the budget balanced and most of the accumulated deficit retired" by the season of 1988-89.

"And even then," he added, "we will have to keep going on raising for the endowment if we're not back into trouble in another 10 years."

The drive was launched, said Mars, with a $1.5 million gift from Austin H. Kiplinger and the Kiplinger Foundation. In brief remarks, Kiplinger said, "now that musical distinction has been achieved, now we must have a financial foundation . . . a great orchestra now exists and nothing else will be acceptable again."

There were also $1 million challange grants from Carl M. Freeman, board chairman of Carl M. Freeman Associates, and David Lloyd Kreeger, honorary chairman of the Government Employees Insurance Co. Mars also noted "major gifts and key leadership" from Norman Bernstein, president of Norman Bernstein Management Inc.; June Hechinger, trustee of the Hechinger Foundation; and Henry Strong, president and board chairman of the Hattie M. Strong Foundation.

The $10.4 million already pledged has allowed the orchestra to begin retiring its current $3.7 million debt.

The current NSO annual budget is approximately $12 million, about 80 percent of which is "artistic related," said Fogel. "That includes guest soloists, guest conductors, resident conductors, players [104], and hall rental, etc."

Current revenues are as follows: earned income, 46 percent; endowment income, 6 percent; income from contributors, 28 percent; grants, 5 percent. That leaves 15 percent to be raised from other sources. The shortfall came despite a 28 percent increase in earned income in the last two fiscal years; expense controls that limited the increase in spending to 6 percent in the same period; a wage freeze agreement between musicians and management in 1982; and a $2 million line of credit from American Security Bank.

Among the financial efforts planned to complete the endowment fund are a $2 million drive by the National Trustees, another $2 million drive directed at area leaders and businesses, and a national corporate campaign drive.

[From the Washington Post, Aug. 30, 1984]

FUNDING THREATENED FOR EDINBURGH ARTS FESTIVAL

By Joanne Mason

Reuter

EDINBURGH, Aug. 29—The Edinburgh International Arts Festival, a three-week cultural extravaganza that fleetingly transforms this Scottish capital into the arts center of the world, has an image problem.

Edinburgh's first Labor Party council, elected this year, has warned that it will stop funding the festival unless it sheds its "stuffed shirt" reputation.

Its size apart, the format of the festival has not changed since its inception in 1947 when Edinburgh saw little more than a few pre-London shows and a Christmas pantomime.

This year as last, the architecturally splendid city has been brimming with thousands of visitors here to enjoy a staggering collection of concerts, exhibitions, plays and recitals during the three weeks ending this Saturday.

But while city taxpayers gave more than a quarter of the $2.6 million budget for the 1984 festival, the council says the event is meaningless to many.

Future festivals would have to embrace the working class, or else the council would "pull the plug," new council leader Alex Wood told the festival society in July.

Edinburgh is arguably the world's biggest arts festival and, according to festival director Frank Dunlop, it is the best. Directing his first festival, he contends that the range and quality of events offered are unmatched by any other annual arts festival.

But what makes the festival unique is its extraordinary festive spirit, he says. "A touch of the carnival atmosphere of Rio de Janiero descends upon the streets of Edinburgh which doesn't accompany any of the other festivals I've visited."

The 1984 festival boasts a total of 207 performances with artists from 30 nations. In a single day there is a choice of eight or nine performances of world repute that this year includes the Thai Royal Ballet and the Washington Opera.

And that is only the official program. The festival has spaw[illegible] a jazz and film festival, a militar[illegible] tattoo and the "fringe"—an offbeat collection of up to 900 performances that has grown up spontaneously alongside its more highbrow sister and which some say is out of control.

Artists eager for an audience use every available performing space in the city, while those without a venue spill out into streets to entertain bemused passers-by.

Squabbling over the festival's funding is not new.

A thriving legal and financial center, the city has long been tarred with a reputation of stinginess toward its festival, which critics say prevents it aspiring to even greater heights.

Facilities in the ancient city are limited. There is no opera house to host the largest international performing companies and visitors have to compete for hotel space.

Foreign orchestras and companies are often forced to seek sponsorships from their own countries.

The question of the festival's image, however, is a new issue and one which is also of concern to Dunlop.

Unlike his predecessors who had strong musical backgrounds, the 57-year-old Dunlop is a Broadway and London theater director.

"For the first time maybe in the history of the festival, this year the visual arts, dance and drama have taken their place alongside music on an equal level," Dunlop said.

"I'm very concerned that the festival should not be just fine arts—you can be just as creative in science and the crafts as you can be in opera," he said.

He is also sympathetic to the council's view that art in Edinburgh should be more than a three-week orgy.

"The council wants to feel the city is alive with creative things all year round. After the festival there's too much of a tendency to fall back into a routine way of life which I don't think the people of Edinburgh want," he said.

[From the Washington Daily News, Jan. 13, 1949]

WASHINGTON SHOULD HAVE ONE THEATER, OPEN TO ALL

By ELEANOR ROOSEVELT

BEFORE coming here I received two communications which dovetail and point up one of the big questions about our National Capital.

The first told me that a group of Negro actors and actresses called the Shearer Players who have their own summer theater on the island of Martha's Vineyard, Massachusetts, were going to appear at the Howard Theater on February 12 in the District of Columbia, giving to the colored people there for the first time a legitimate theater production. This is a very extraordinary group, which has attracted the notice of theater lovers in Boston, and it seems to me a pity that their play should be only for the Negro population to see. In all probability, many other people who care about good theater would find it an interesting production.

Simultaneously I received a letter from J. G. Frain, executive secretary of the Washington Art Center Assn., begging that every possible influence be brought to bear on the Government to give the Belasco Theater, here, to some group that would operate it as a democratic theater and concert hall. It would serve the population as a whole and give an opportunity to all artists to appear on its stage. This has come about because the National Theater has been converted into a movie theater.

It seems to me that the National Capital should have one theater and that that theater should be open to all citizens, no matter what their race, color or creed.

BEFORE I left New York City on Tuesday I attended the annual meeting of the New York State Women's Trade Union League.

I like catching up on the thinking of this group with which I have been so long associated. I find, as the years go by, there are more and more accomplishments that make me feel that the day may come when women will be so well organized and integrated with men in their various occupations that the working women will not need separate organizations but will form a strong and influential part of a joint organization of workers.

There are certain points that women workers—because they are not only workers but homemakers as well—feel particularly keenly about. I think, therefore, that women are particularly fitted to make certain studies and recommendations necessary for solving particular problems.

* * *

EN ROUTE here I stopped in Baltimore to speak at a luncheon of the League of Women Voters. Driving to Washington I was accompanied by my friend, Mrs. Durward V. Sandifer, and went to stay, as usual, with my old friends, Mr. and Mrs. Adolph C. Miller.

We usually manage on these hurried visits to have one selfishly pleasant evening alone together when we can talk unreservedly about whatever comes to mind.

LETTER FROM GEORGE FRAIN

July 5, 1985

Hon. Arlen Specter
Chairman, Appropriations Subcommittee
on the District of Columbia
Senate Office Building, Room SD 129
Washington, D. C. 20510

Dear Chairman Specter:

I hope you will include this letter in the published hearings on the FY 1986 D.C. Budget. I am writing to you to express alarm over two matters of concern to most D. C. taxpayers as well as the nation's taxpayers. Here are the matters which need your attention in your oversight capacities. Please include the attachments in the record also.

On July 1, 1985 a three-judge panel of the U.S. Court of Appeals, consisting of Judges J. Skelly Wright, Patricia M. Wald, and Harry T. Edwards, handed down at the request of Mayor Barry, a unanimous decision that he had a right to cancel eight 10-year enormously expensive leases on office space at the Perpetual Office Building at 1111 E Street, N.W. The eight leases were signed by the head of the city's Department of Administrative Services, and involved $22.5 million, at $2.5 million a year.

In the attached news report of June 27, 1985 the Washington Post states that "A 1975 city executive order specifies that any lease over $5 million must be approved by the mayor or his designee." It is clear that this executive order must be revised and amended if the U.S. District Court is not to be called on constantly to protect the city and its taxpayers. There are several ways it could be amended, for example, by providing that any lease over $500,000 must be signed by the Mayor. Another step would be to provide that no department or agency head could sign a lease for over $500,000 for a multi-year period, and that only the mayor could do so.

Since the 10-year, $22.5 million lease if approved would involve an annual appropriation of $2.5 million by the Congress, the Senate and House Appropriations Subcommittees on the District of Columbia must, like the U.S. District Court, take steps to protect local and national taxpayers who would have to pay taxes for this and other unjustified multi-million dollar leases which may crop up in the future. I include three newspaper reports.

Secondly, I include for your information (1) a Washington Post editorial of May 8, 1985 titled "Cash Management and the Mayor", and (2) a Washington Post news report of May 25, 1985 titled "D.C. Official Queried on Investment Memo" on a City Council hearing into a $100 million investment of city funds in two small government securities firms that failed. The firms were: E.S.M. Government Securities, Inc. of Fort Lauderdale, Fla., and Bevill, Bresler & Schuman, Inc. of Livingston, N.J. Dozens of savings and loan associations and municipalities lost more than $500 million in these two firms. The news reports included here are only a fraction of the many news and TV and other news media reports on this unfortunate investment and its aftermath, including information developed at the City Council hearings. In none of these news reports was there any mention of Congressional concern, or Congressional oversight, that I can recall.

Don't you think it is high time that the Senate and House Appropriations Subcommittees on the District of Columbia took steps, as part of their oversight duties, to protect the District of Columbia and its citizens who pay the taxes, in order that the U. S. District Court doesn't have to act as trustee/manager on a pinch-hitter basis as it did with regard to the $22.5 million lease for office space in the Perpetual Building? The City got its $100 million investment back, but just barely, from E.S.M. Government Securities, Inc. and from Bevill, Bresler & Schuman, Inc. I would appreciate having a detailed answer from you as to what steps Congress can take in these types of cases, and in other cases, to protect local and national taxpayers, since the Congress must have responsibilities equal to that of the U.S. District Court. Why has the Congress failed to exercise its oversight responsibilities in these matters?

Respectfully yours,

J. George Frain (a very frightened taxpayer

1789 Lanier Place, N.W.
Washington, D. C. 20009

[From the Washington Times, July 2, 1985]

MAYOR'S CANCELING OF GUTIERREZ LEASES IS UPHELD BY COURT

By Michael Hedges
THE WASHINGTON TIMES

D.C. Mayor Marion Barry's right to cancel leases signed by former city official Jose Gutierrez was upheld yesterday by a three-judge panel of the U.S. Court of Appeals.

Attorneys for Angel Roubin, a Washington businessman who signed the leases with Mr. Gutierrez, had asked the appellate court to grant a preliminary injunction that would have prevented the city from breaking the leases until Mr. Roubin's lawsuit could be heard in U.S. District Court.

The judges decided unanimously to uphold a decision U.S. District Court Judge Oliver Gasch signed last week denying an injunction against the city.

Jerry Green, an attorney for Mr. Roubin, said his client had not decided whether to pursue the suit in U.S. District Court or to refile it in D.C. Superior Court.

Eight leases were signed for office space in the Perpetual Building at 1111 E St. NW. "It is not clear what will happen to the building," said Mr. Green. Mr. Roubin's attorneys had argued that allowing the leases to be broken would force Mr. Roubin to default on loans he secured to finance the purchase of the building. Those loans were given by Mutual Benefit Life Insurance Co. after Mr. Gutierrez signed notes for the city guaranteeing the city would pay for the leases.

In November, Mr Roubin and Mr. Gutierrez, then head of the city's Department of Administrative Services, signed the $22.5 million leases that would have given the city use of office space in the Perpetual Building for 10 years.

A short time later, Mr. Gutierrez publicly alleged that Deputy Mayor Thomas Downs forced him to sign city contracts for political purposes.

Mayor Marion Barry retaliated by accusing Mr. Gutierrez of signing "irregular" contracts with Mr. Roubin, a close friend of Mr. Gutierrez and a fellow Hispanic.

Mayor Barry commissioned his counsel, Herbert O. Reid Sr., to investigate the Roubin-Gutierrez leases. Mr. Reid reported they would cost the city far more than the office space was worth, and that Mr. Gutierrez had signed them illegally, overstepping his authority. He said Mr. Gutierrez first prepared one lease, then broke it into eight parts after discovering he only had authority to sign contracts under $5 million.

After receiving Mr. Reid's report, Mayor Barry fired Mr. Gutierrez and invalidated the leases.

Attorneys for Mr. Roubin claimed their client could be irreparably damaged by being caught in the middle of a political crossfire between Mr. Gutierrez and Mayor Barry.

Mr. Roubin was given a temporary restraining order stopping the cancellation until Judge Gasch could review the injunction request last week. Judge Gasch dissolved that order Wednesday. He then agreed to stay his order until the appellate panel could review the case yesterday.

Mr. Gutierrez also sued the city, seeking to be reinstated to city government duty. Two weeks ago a federal judge refused to order the city to rehire Mr. Gutierrez pending the hearing on that suit.

Yesterday's decision by U.S. Court of Appeals Judges J. Skelly Wright, Patricia M. Wald and Harry T. Edwards was unanimous.

[From the Washington Post, June 27, 1985]

JUDGE BACKS CITY ON CANCELING LEASE

By Peter Perl
Washington Post Staff Writer

A federal judge upheld yesterday the District government's plan to cancel a $22.9-million lease agreement negotiated by former city official Jose Gutierrez, describing Gutierrez as "an unfaithful servant" who had circumvented D.C. purchasing rules in awarding the 10-year lease to a firm headed by a friend.

Gutierrez, the former head of the D.C. government's purchasing agency who was fired by Mayor Marion Barry on May 20, bypassed the city's $5 million limit on his contracting authority by splitting into nine leases the contract for the Perpetual Building, according to U.S. District Judge Oliver Gasch. The building is owned by a partnership headed by Gutierrez's friend, Angel S. Roubin.

"To saddle the taxpayers of the District of Columbia with substantial rental payments because of the conduct of one of its unfaithful servants would not be in the public interest," Gasch said in a 32-page ruling.

The judge rejected a bid by Perpetual Building Limited Partnership, owned by Roubin and his sons, Jose and Richard, for a preliminary injunction that would have prevented the city from stopping leases for the building at 1111 E St. NW. The city planned to move six agencies there.

Barry said yesterday that Gasch's decision—coupled with an earlier federal court ruling that denied Gutierrez an injunction to regain his job—affirms the administration's position in its highly publicized dispute with Gutierrez.

Gutierrez, who was the city's highest-ranking Hispanic official and whose firing prompted protests from some Hispanic leaders and business executives, had accused city officials of demoting and later firing him because he resisted pressure from Barry and City Administrator Thomas Downs in awarding other city contracts.

Barry, at his monthly news conference, said, "We have had two legal rulings which indicate that the city is right up to this point." The mayor said that the city "never paid any money on those illegal leases."

Roubin, who purchased the Perpetual Building in November in anticipation of the lease agreement and obtained a $15-million mortgage, has until Friday to appeal the ruling, Gasch said. The judge noted that Roubin now faces foreclosure for nonpayment because the city has refused to pay rent. However, he added that Roubin should have known there were problems with Gutierrez's authority to negotiate the deal.

Gutierrez invited Roubin to a meeting last August and discussed Roubin's purchase of the building so he could lease it to the city, according to the court ruling. Gutierrez signed the $22-million lease in October, but split it after lawyers in his Department of Administrative Services advised him of the limit on his authority. A 1975 city executive order specifies that any lease over $5 million must be approved by the mayor or his designee.

Gutierrez said yesterday he regretted that Roubin lost the case.

"It was not my intent to circumvent any regulations," Gutierrez said. "Indeed, the idea for writing the leases in this manner came from Mr. Downs. Those were decisions he made."

Gutierrez said that Downs suggested the splitting of leases last September so that individual agencies occupying the new building could pay rent separately so the city would have an easier time in billing federal officials for various reimbursements.

But Gasch's decision said that two lawyers in Gutierrez's department had given depositions stating that Gutierrez had proposed splitting the leases. Downs denied yesterday that he had advised splitting leases. He said that statements by other city officials indicated Gutierrez had made "a conscious decision" to split the leases to avoid a review by other officials.

According to Gasch, "Mr. Gutierrez knew that the $22-million master lease required approval . . . . His motive in breaking the master lease into nine separate ones was to avoid this approval requirement."

[From the Washington Post, July 2, 1985]

GUTIERREZ DROPS SUIT TO GET D.C. JOB BACK

By Sandra Evans
Washington Post Staff Writer

Jose Gutierrez, the ousted former head of the District's purchasing department, has given up his court battle with Mayor Marion Barry seeking reinstatement and $3 million in damages.

"I have run out of gas," Gutierrez said yesterday. "I want to put it all behind me."

Gutierrez had earlier lost preliminary rounds in the courts. U.S. District Judge John H. Pratt ruled last month that the firing of Gutierrez was proper. The mayor could "act summarily for reasons of his own" because Gutierrez was in a position in which he served at the pleasure of the mayor, Pratt said.

Gutierrez went public in March with allegations of irregularities in city contracting practices and charged that City Administrator Thomas Downs had pressured him to approve contracts for political reasons. Barry demoted Gutierrez, who had been the highest-ranking Hispanic in the mayor's administration, and fired him in May.

Gutierrez said the firing was in retaliation for his exposing wrongdoing, and he filed suit against Barry, Downs and two other top city officials.

Downs responded that he had had to revoke Gutierrez's authority to sign leases in early January because of repeated "insubordination and incompetence."

Yesterday Downs said that "there was never in my mind a credible issue that was raised [by Gutierrez] in the contracting process."

Gutierrez said yesterday that his legal bills total $20,000 and "it has become difficult to find a job." Asked whether he would make the same public allegations again if he had it to do over, Gutierrez said he did not know.

"I have strictly negative memories about all this," he said.

On whether he stands by all of his original allegations, he said: "What difference does it make? It doesn't help me."

On June 26, U.S. District Judge Oliver Gasch upheld the District government's plan to cancel a $22.9 million lease agreement negotiated by Gutierrez and described him as "an unfaithful servant" who had circumvented D.C. purchasing rules to award the lease to a firm headed by a friend.

The judge rejected a bid by the firm, Perpetual Building Limited Partnership, for a preliminary injunction that would have made the city continue the leases for the building at 1111 E St. NW.

Yesterday the U.S. Court of Appeals denied a motion for injunctive relief by the partnership and said "it is doubtful" that the firm had raised a substantial enough federal claim to give the district court jurisdiction in the matter.

The court said the firm "has presented no plausible evidence that it has been 'debarred' or 'suspended' from entering into future contracts with the District of Columbia."

[From the Washington Post, May 8, 1985]

CASH MANAGEMENT AND THE MAYOR

WHEN THE D.C. Council held its hearing on the Bevill, Bresler case, Mayor Barry responded merely by blustering. But the council was asking a legitimate question: why did the city invest millions of dollars with an underfinanced and shaky firm when it had many sounder competitors from which to choose? The city's cash manager, Alvin C. Frost, warned the city in a memorandum last December that the dealer—Bevill, Bresler & Shulman, Inc., of Livingston, N.J.—was not reliable. Last month Bevill, Bresler went bankrupt while holding $10 million of the city's money. The city has recovered the money but may yet find itself entangled in litigation over the case.

At the hearing, Mr. Frost told the council that he had been repeatedly pressed by his superior, Assistant Treasurer Fred Williams, to throw business to Bevill, Bresler. That's interesting. Wouldn't you think that Mayor Barry would want to know a little more about what happened?

But Mr. Barry's first reaction was to denounce the hearing as a "political inquisition." His second was to ask plaintively why anyone would pressure the city's cash manager—"What's the purpose?" Good question. What was the purpose? The mayor's supposed to be in charge. Has he really no interest in finding out what was going on? The mayor further huffed: "The implication is that there is some hanky-panky, and I resent it."

He shouldn't resent it; it's perfectly natural, since the affair has been public knowledge for a month and the mayor has yet to offer any explanation of it. There is no visible evidence of corruption. But there's plenty of evidence that the city's deputy mayor for finance, Alphonse G. Hill, was waltzed around very expertly by the salesmen from Bevill, Bresler and that he got very exasperated when dealings with these nice people were blocked by Mr. Frost—who, let's remember, was totally right about them.

Mr. Frost was right about another thing as well. He warned the city that bond buyers don't like dealing with bad managers, and this kind of mismanagement leads to lower bond ratings and higher interest costs to the city. The council has an obligation to keep pushing until it gets the answers that it needs to assure itself that this fiasco won't be repeated.

Incidentally, Mr. Frost, the cash manager, told the mayor that he has been taking a hazing from his superiors for having committed the bureaucratic sin of being right when they were wrong. The mayor will have to put a stop to that if he wants to keep able financial people working for him.

[From the Washington Post, May 25, 1985]

D.C. Official Queried on Investment Memo

By Eric Pianin
Washington Post Staff Writer

D.C. City Council member John Wilson, angry that Assistant Treasurer Fred Williams had shown the council a backdated memo to justify having invested nearly $100 million with a now-bankrupt firm, produced evidence yesterday that Williams may have lied about checking the firm's references.

Williams, one of three high-ranking city officials summoned by the council yesterday to answer questions under oath about the memorandum, testified May 6 that he had personally contacted four references of Bevill, Bresler & Schulman Inc. last October, before investing with the firm.

However, Wilson (D-Ward 2), chairman of the Finance and Revenue Committee, yesterday introduced letters from two of the references—Harry MacDougall of the Home Savings Association of Florida, and Charles C. Conklin of the Federal Home Loan Mortgage Corp.—stating they had never discussed BB&S with Williams or any other city official.

A third reference, R.L. Bond of the CSX Corp. in Richmond, said in a letter that he could not recall talking to Williams last fall until he spoke with Williams by telephone a week ago and that Williams "assured me that we had spoken."

"Did you tell Mr. Bond that your job was on the line and it would be helpful if he said he had talked with you?" Wilson snapped at Williams during his nearly three hours of testimony.

Williams, a key figure in the District's decision to begin investing with BB&S despite the warnings of a D.C. senior cash managment analyst, denied that he persuaded Bond to write a letter on his behalf.

He conceded that he had "erred" in testifying May 6 that he had spoken with MacDougall, but he insisted that he had contacted Bond, Conklin and Steven Miller, the assistant treasurer of Iowa.

"These gentlemen, in my opinion, are trying to distance themselves from that activity [of providing advice on BB&S Inc.]," Williams said, in trying to explain why some of the references denied they had spoken with him.

Deputy Mayor for Finance Alphonse G. Hill, who also testified yesterday, told reporters later that he cannot be totally certain of the veracity of Williams' testimony until he contacts the references Williams claims to have spoken with.

"It's a serious consequence if somebody lies under oath," Hill said. "There are penalties for perjury. I think the irony in this and the tragedy of the situation is that these people we're talking about have not been called to testify."

Asked by a reporter whether he planned to take any action against Williams for the backdated memorandum, Hill replied: "We don't really know what we plan to do at this point. That's open to discussion as to how we plan to revamp and revise the office. All of our options are open."

Williams, the lead-off witness, apologized to the council members

D.C. OFFICIAL QUERIED ON INVESTMENT MEMO—Continued

for having submitted a memorandum stamped with a Dec. 7, 1984 date that was actually drafted by Williams on April 11, 1985—four months after the city began investing with BB&S and four days after reports that the firm had gone bankrupt.

"I have been been verbally assaulted in the media as lacking integrity, competence and, above all, honesty," Williams said. "I ask for no special favors or sympathy in this matter before us, but I do ask for a sense of fair play and objectivity."

Williams testified that the backdated document was essentially a recapitulation of information taken from three pages of handwritten notes he prepared Dec. 7.

He said he referred to those notes in a meeting Dec. 11 with D.C. Controller Anthony Calhoun, where a decision was made—subject to Hill's final approval—to place BB&S Inc. on a list of preferred investment institutions.

However, Wilson, council Chairman David A. Clarke and council member Betty Ann Kane (D-At Large) repeatedly voiced doubts about Williams' explanation of how and why the memo was prepared.

"I still have difficulty, Mr. Williams," Clarke said. Later in the proceedings, Clarke warned Williams, "If you said anything wrong today [under oath], the consequences will be more serious" than adverse media coverage.

Wilson contended that Williams drafted the memo, after BB&S Inc. went bankrupt, to create the erroneous impression that considerable thought and analysis had gone into the decision to invest with the firm.

Under questioning, Williams acknowledged that neither he nor other members of the city's cash management team had reviewed Securities and Exchange Commission records to determine whether BB&S Inc. had engaged in any wrongdoing. Williams and Hill said they were unaware of a 1980 case in which the SEC censured the firm and barred it from trading in certain mortgage-backed securities for 60 days.

Wilson also questioned whether Williams had actually prepared handwritten notes about BB&S Inc. in December, and he raised the possibility that his committee would retain a handwriting and documents expert to determine exactly when the notes were prepared. Assistant Corporation Counsel Richard Aguglia, who aided Williams in his testimony, objected to Wilson's proposal.

STATEMENT OF THE D.C. COALITION FOR JUSTICE

The D.C. Coalition for Justice is pleased to present this testimony on the financial considerations of the District's incarceration policy. We submit this testimony not to comment on specific line items in the FY 1986 Budget for the District of Columbia, but rather to comment on a broader financial policy issue for the District-- whether or not to build a new prison. It is apparent that the issue of new prison construction, the costs of new prison construction and maintenance are a major financial weight looming ahead for both the District and the federal government.

The D.C. Coalition for Justice is a group of local organizations, concerned individuals, and religious groups who have come together to promote alternatives to incarceration and to urge that District officials carefully study the current and projected prison population before considering whether to construct a new prison in the District. We have been asked to testify before House of Representative subcommittees, have met with District officials regarding prison construction, and have conducted public education efforts. Among our members are church leaders and other concerned individuals, the National Conference of Black Lawyers, Correctional Chaplains from the Greater Washington Area, the Unitarian Universalist Service Committee National Moratorium on Prison Construction, the ACLU National Prison Project, the ACLU of the National Capital Area, Luther Place Church, Ward Memorial A.M.E. Church, and Brown Memorial A.M.E. Church.

The members of the Coalition have a longstanding interest in the rights of prisoners and in alternatives to incarceration. Many of them work directly with prisoners -- providing services and seeking alternatives.

We urge you not to designate money for a new District incarceration facility. We have outlined below the costs and policy considerations involved in building a new prison in the District, and the effectiveness of alternatives to incarceration.

Costs of Constructing and Operating a New Prison

> Jails are expensive to build and more expensive to staff and operate. As of January, 1982, a standards-compliant jail cost about $43,000 a cell to build and about $50 a day to house each prisoner. A community preparing to respond to a jail crisis should be familiar with certain facts about the long-term financial implications of building a new jail. The community should also be aware of the legal and probable financial implications of electing to choose a "quick fix" solution to its jail problem.[1/]

Citizens of the District of Columbia must heed this warning by the Justice Department's National Institute of Corrections (NIC) and carefully analyze the proposal that a new prison be constructed without delay. The construction of a new prison in the District would involve an extensive appropriation of federal and/or District funds. We ask whether this major expenditure of public money is best used to lock up more D.C. citizens, or whether it might be better used to fund alternatives to incarceration as well as District programs supporting improved housing, employment programs, drug and alcohol rehabilitation facilities, or other sorely underfunded social programs.

Various cost estimates for prison construction presently exist; none of them are inexpensive. A survey of prison construction costs of thirty-four penal institutions nationwide by NIC on behalf of the Department of Justice showed that the average space for every prisoner costs about $43,000, but figures varied from $21,112 to $93,908.[2/]

Another source cites the average 1981 prison bed cost as $72,000, but notes that this figure can be misleadingly low because it does not take into account the fact that most prisons are built with borrowed money, which, at current interest rates can triple the cost.[3/]

Recent examples of new prison construction demonstrate the skyrocketing costs of building these facilities. For example, Virginia's 360 bed Mecklenberg Correctional Center cost $55,600 per bed in 1978,[4] Contra Costa County's (California) new jail cost $64,000 per bed in 1981,[5] and the Tombs jail in Manhattan cost $100,000 per bed to rebuild.[6]

District of Columbia officials reportedly have estimated that building a new prison here would cost between $28,000 and $50,000 per cell, depending on the size and security level of the facility.[7]

Prison construction costs are only the beginning of the massive expenditures needed to sustain a penal facility. The construction costs of a new prison constitute only eight percent of the total outlay over an institution's estimated 30 year life span.[8] The NIC study found that three or four years after a new prison is occupied the accumulated costs of operations will exceed the initial construction cost.[9] Staff salaries, fringe benefits, travel and training are the largest share of prison operating costs, totaling seventy percent of a prison's annual operating budget.[10] Construction of a new prison might lock us into extensive operating expenditures which will make flexibility in Department of Corrections budgeting even more difficult to achieve.

We must keep in mind these high costs of prison operations when we evaluate the plan to build a new facility. We must examine the construction costs in terms of the higher longterm operating costs which the District would be left to shoulder.

The human costs of incarceration are also extremely high -- as staggering as the fiscal costs. They impact directly on the social, emotional and psychological well-being of the incarcerated person and his or her family. Incarceration causes isolation from the family and community. It places a prisoner in the position of being seen as caged, treated as caged and therefore responding as one would expect a caged human being to respond. Prison rebellions nationwide evidence the explosive result of inhumane "caging" practices. The incidents of violence within local facilities are well-known, and have been documented in litigation involving those facilities.[11/] Recidivism rates also flow from the incarceration experience, because of increased isolation, anger and deprivation. Virtually every study since the study by the President's Commission on Crime in 1965 has documented the relationship between recidivism and incarceration. Incarceration of the young has also been shown to increase their recidivism rate.[12/] The construction of more cages cannot be expected to do other than contribute to the cycle of criminal behavior.

We should also be prepared to look at other expenses that are, in effect, hidden costs of running a prison. One such hidden cost takes the form of increased welfare payments because locking up an offender many times means that the spouse and children must receive public assistance.

An increase in the incarcerated population will also undoubtedly lead to more civil lawsuits on behalf of prisoners, arising out of prison-related incidents or inhumane prison conditions. This will increase the already overloaded case dockets of Corporation Counsel attorneys who defend the District in such actions.

Finally, the full cost of imprisonment is hidden because of the significant but unpublicized loss of contributions to the gross national product and federal and city tax revenues due to the incarceration of those who otherwise have jobs.[13/]

The NIC study recognized the heavy burden of these exorbitant prison construction and operating costs. It concluded that in 1982 dollars, a 150 capacity prison cost 6.5 million dollars to build and would cost about 58 million dollars to operate through 2012 A.D. It suggested that if a community could remove certain nonviolent persons from the prison and reduce the population from 150 to 125, the construction cost would be 5.4 million dollars and the 30 year operating costs would be 48 million dollars. This would result in an annual savings of about $370,000, totaling 11.1 million dollars over the thirty years.[14]

The sobering figures detailing the financial burden of building and running a new prison must be carefully examined and applied to the District's particular demographic and criminal justice policy needs. Even if the federal government pays for construction, we must ask whether the District can afford the remaining costs, and whether policy considerations merit paying those costs. Only then can this community make an informed choice about whether it wishes to spend its scarce tax dollars on a facility with such a high price tag.

Alternatives to Incarceration Benefit The Community and Save Tax Dollars

Ironically, even the expensive "solution" of constructing and operating a new prison will not end overcrowding, which has been the subject of litigation at both the D.C. Jail and the Lorton facility. (This litigation in fact may be partly responsible for the new push for construction of a facility). A 1983 study of the District's detention population and criminal case flow funded by NIC concluded that:

> City officials can be congratulated for their recognition that expansion of jail bed capacity, absent any curtailment of demand, is a solution that is temporary at best.[15] This conclusion is shared by the Team [the study's authors] on the basis of our examination of factors contributing to the demand for jail beds. Although of necessity superficial, our examination yielded evidence to suggest that in a number of functional areas of the criminal justice process, there exists potential for a reduction in both the volume of jail admissions and the average length of time persons admitted to the jail are held prior to the disposition of their cases.[16]

Alternatives to incarceration are an effective means of implementing this study's recommendation to reduce the volume of prison admissions. Many varied alternatives to prison terms presently exist. The use of these programs should be increased to reduce the city's incarcerated population, which could alleviate the present overcrowding at Lorton and the D.C. Jail and relieve the pressure to build a new facility. Options such as community service, victim restitution, fines, community dispute and mediation centers, extended work release, intensive probation, and expanded programs for drug and alcohol treatment should be encouraged and expanded in the District.[17/] While we understand that it is not the purview of this committee to consider the minutiae of D.C. sentencing policy, we also believe that a brief review of some of the available alternatives will be helpful in this forum.

Many of these alternatives have been included in a nationwide sentencing program called Client Specific Planning, implemented by the National Center on Institutions and Alternatives.[18/] The fundamental principles underlying this program are (1) numerous and effective controls on the defendant; (2) significant restitution, and (3) some type of court-imposed punishment. This program is a far more cost-effective method of treating offenders than warehousing them in a costly new prison.

A similar program has operated in the District of Columbia. An organization called Sentencing Services has for the last three years designed individual alternative sentencing plans for offenders, most of whom are convicted felons. The offenders, all of whom are on probation, have alternative sentencing plans specifically tailored to their cases. All of the plans combine a punitive and rehabilitative element. They usually combine community service, fines or victim compensation, and drug or mental health counseling. Sentencing Services has monitored 43 convicted felons in its program over the last three years. The offenders pay the program on a sliding scale to devise the individual sentencing plan, and foundation grants have helped to pay for personnel to monitor the offenders' progress.

The experience of other jurisdictions demonstrates that alternatives to incarceration are effective and reduce criminal justice costs. Intensive probation has been instituted in

Georgia, Texas, New York, Washington State, New Jersey and Alabama. In the Georgia program, 13 two-person teams, each composed of a probation officer and a "surveillance officer" watch over no more than 25 probationers. They see them at least five times a week and often more. The program is generally used only for offenders who otherwise would have gone to prison. It results in significant savings, costing $4.75 per day per offender, compared to $24.61 per day for imprisonment.19/ Most of the funds in Georgia come from a fee assessed against probationers, and Georgia estimates savings of $5.4 million per year.

Texas claims that its intensive probation program has eliminated the need for one 2,000-person prison and $8.3 million in operating costs.20/ And the Director of the D.C. Department of Probation has indicated that one way his department could reduce the jail population would be to set up an intensive probation program aimed specifically at a portion of defendants who clearly would otherwise receive a jail or prison sentence.21/

Similarly, an Indiana restitution program in two counties, in which offenders contributed 17,000 hours of work in one year, created an economic benefit of over $100,000, which included the value of the work contributed and the costs of avoided incarceration.22/ Mississippi has three restitution centers, and during 1978 the state saved over half the cost of prison per person. In less than three years offenders contributed $118,973 for room and board, $53,879 to support their families, $83,290 in restitution and $94,238 in taxes.23/

Work release programs have also proven effective. For instance, Delaware has a work release program for individuals convicted of minor crimes. These individuals are permitted to live in the community but must return to prison every 72 hours for interviews and blood or urine tests. In two years 1,090 persons were released, and only 70 new crimes were committed by that group, none serious.24/

Community service programs are also cost-effective. Offenders are placed where their skills will be most beneficial -- running youth centers, assisting the elderly, renovating community centers, etc. One community service project for adult felons in Pima County, Arizona reported providing 15,000 hours or $35,000 worth of labor to county residents and agencies in eighteen months.[25/]

Furthermore, much of the population pressure on the D.C. Jail would be alleviated if the many pre-trial detainees there did not experience lengthy delays before coming to trial. A speedy trial act for the District of Columbia is essential to reduce overcrowding at the jail and to ensure more equitable treatment for those accused of crimes.[26/] The D.C. Technical Assistance report also recommended a review of the bail schedule, noting that some of the dollar amounts assigned to specific charges may be excessive, and may lead to unnecessary short term incarceration.[27/]

The D.C. Technical Assistance Report also cited significant grand jury delays in the District as a cause of unnecessary "jail bed days."[28/] The report cogently summarized the negative effects of all of the District's pre-trial delays:

> The claimed value in incarcerative penalties for deterrence or rehabilitation is sadly diminished by the practice of defendants, in essence, "serving time" during the pretrial period. Virtually no correctional programming is available at the jail; victims are unable to pick up the pieces of their lives with a sense of resolution; and the community is denied whatever benefits of deterrence are activated by the expectation of swift and sure determinations and punishments.
>
> This delay is also costly in terms of population management. When a large number of detainees ought to have been tried, a large number of those convicted ought to have been sentenced, and a large number of sentenced felony prisoners ought to have been classified and transferred to a facility designed for convicted offenders, the entire approach taken to resolve prison overcrowding can be badly skewed.[29/]

Other jurisdictions have confronted their prison overcrowding problem by passing emergency release legislation. These types of programs provide for the release of enough inmates to get the system back down to its proper capacity once it has reached a certain level of overcrowding. The governor, parole board or corrections officials usually choose which non-violent inmates can safely be released. Usually the inmates who are nearing the end of their sentences are released one to nine months early.

Emergency release acts have been passed in Michigan, Oklahoma, Connecticut, Iowa, Ohio and Georgia. In Michigan, for example, more than 900 inmates have been released early under its 1981 legislation. When the state's prisons exceed 95 percent of their rated capacity for 30 consecutive days, the governor declares an emergency, triggering a temporary rollback of most prisoners' sentences.[30/] The District should consider this type of legislation, which has already been introduced as D.C. Council bill number 6-63. A D.C. Emergency Release Act would promote more humane prison conditions by reducing overcrowding, and could also lessen the risk of the District's liability and costly attorneys' fees in lawsuits challenging the conditions of our city's penal institutions.

Conclusion

The evidence clearly points out the financial burden of building a new facility. The evidence is equally clear about prisons not being a solution to our crime problems.[31] Meanwhile, the city desperately needs a fresh and serious look into some of the more cost-effective and humane alternatives to incarceration which are being used to great effect elsewhere in the country.

NOTES

1/ "The Cost of Constitutional Jails," prepared by the Center for Justice Planning under a grant for the National Institute of Corrections, U.S. Department of Justice, February 1982, page 1. [Hereinafter cited as "NIC Study."]

2/ NIC Study, pages 3, 8-9. This $43,000 average cost does not include the cost of the land, extensive site preparation or the professional fees of the architect, the engineer, or construction supervision. The NIC survey found that the cost of site preparation is typically slightly less than 4% of the construction cost, and the average fee for architectural and engineering services slightly less than 7.5% of the total construction cost.

3/ Edna McConnell Clark Foundation, *Overcrowded Time: Why Prisons Are So Crowded and What Can Be Done*, page 22, 1982. [Hereinafter cited as *Overcrowded Time*.]

4/ Edna McConnell Clark Foundation, *Time to Build? The Realities of Prison Construction*, page 15, 1984. [Hereinafter cited as *Time to Build?*] citing Abt Associates, *American Prisons and Jails*, Vol. III, p. 373.

5/ *Time to Build?*, page 15, citing "Costs of the Contra Costa County Detention Facility," Office of the County Administrator, Oct. 19, 1982.

6/ *Time to Build?*, page 15, citing "Factsheet," New York City Department of Corrections, 1983.

7/ The Washington Post, "Mayor Sets Deadline for New Prison Site," May 1, 1985, page D 5, Cols. 5 & 6.

8/ *Overcrowded Time*, page 22.

9/ NIC Study, page 23.

10/ NIC Study, page 30.

11/ *Campbell v. McGruder*, Civ. Action No. 1462-71; *Inmates of D.C. Jail v. Jackson*, Civ. Action No. 75-1668 (both cases pending decision by Judge William Bryant, U.S. District Court for the District of Columbia)(evidence admitted describing extreme violence in D.C. Jail).

12/ *See, e.g.*, Wolfgang, Figlio and Sellin, *Delinquency in a Birth Cohort*, University of Chicago Press, 1972.

13/ American Foundation, Inc., *"Just the Facts"*, page 5.

14/ NIC study, page 31.

15/ The study was published before Mayor Barry indicated that he might accept a new prison if constructed on federal property with federal funds.

16/ "District of Columbia On-Site Technical Assistance Report," prepared by a Technical Assistance Team, contracted by the Jail Division of the National Institute of Corrections, November 1983, pages 4-5. [Hereinafter cited as "D.C. Technical Assistance Report."]

17/ For a survey of different states' experiments with alternatives to incarceration, see *ACLU State Lobbyist*, March 1985, pages 4-5.

18/ Further information on Client Specific Planning may be found in *The Judges' Journal*, Vol 21, No. 1, American Bar Association, Winter 1982 and in *Update on Law-Related Education*, American Bar Association, Fall 1982.

19/ Gettinger, "Intensive Supervision: Can it Rehabilitate Probation?" *Corrections Magazine*, page 12, April 1983.

20/ Gettinger, page 8.

21/ D.C. Technical Assistance Report, page 46.

22/ Overcrowded Time, page 30, citing Prisoner and Community Together, Inc., Annual Report 1979-80, at pages 5-8.

23/ "Just the Facts", page 13.

24/ Time to Build?, page 43, citing Robert Mathias and Diane Steelman, "Controlling Prison Population," at page 13.

25/ "Just the Facts", page 12, citing Robert Keldgord, "Community Restitution Comes to Arizona" in Offender Restitution in Theory and Action, 1977, at pages 165-6.

26/ ACLU has long advocated such legislation and remains eager to work with the Council in passing a D.C. Speedy Trial Act. The ACLU has submitted a comprehensive bill to the Council's Judiciary Committee.

27/ D.C. Technical Assistance Report, page 29.

28/ D.C. Technical Assistance Report, pages 33-34.

29/ D.C. Technical Assistance Report, pages 40-41.

30/ Overcrowded Time, page 36.

31/ See Overcrowded Time and Universalist Service Committee, National Moratorium on Prison Construction, "More Jails and Prisons will Stop Crime, Right? Wrong." 1984.

STATEMENT OF HAROLD FISHER, JR., PRESIDENT, THE WASHINGTON TEACHERS' UNION

I am Harold Fisher Jr., President of the Washington Teachers Union. Our office is located at 2101 L Street, N.W. Washington, D.C. On behalf of the Washington Teachers Union AFT-AFL-CIO, I regret not having the opportunity to orally share concerns with you and your committee on the D.C. Public School Budget. We do, however, appreciate the serious work load before you and your colleagues. Also, we are gratified for the invitation to submit those concerns to the committee as written testimony.

Having recently been elected to the presidency of the Washington Teachers Union, I wish to acknowledge the kind of attention you and the Committee have given to the school system enabling it to make the progress which the record shows.

These deliberations by this committee, and that of The House of Representative Appropriotions Subcommittee on the D.C. Public Schools have in recent years displayed a gratifying sensitvity. We, likewise, commend The City Administration, itself locked into fiscal uncertainty, for its compensatory effort. Their search for compromises are understandable, even though short of required resources.

We are concerned, however that policies and procedures initiated elsewhere in the Federal system are not, unfortunantely, reflective of the educational purpose nor the desperate need for it. The Superintendent of schools, Dr. Floretta McKerzie, in this connection, testified before House Appropriations Sub Committee on May 22, 1985, characterizing the 1986 Budget as --- containing the necessary funds to provide services.

Contrastingly, the School Budget narrative notes the 8% increase over the 1985 Budget request as responding to the community mandate for improvements accommodating growing student needs. Having heard these spokespersons in Board hearings, this compromise budget before you means that such is not to be. Those needs highlighted an expanding ethnic population broadening bilingual education demand from elementary to adult levels.

The now familiar and repetitious inflation impact citation requiring compensatory adjustments for cost pressures is real. Those pressures are real at the classroom level if not elsewhere. Impact aid funds declined in excess of 50%, with further reductions projected in future years. Assimulation of grant program costs neccessitates covering with regular budget monies. Other obligations are postponed or reduced. Priorities must be reexamined to better meet needs under lower funding conditions. The regular budget assumes bigger costs for the gifted and talented, Special education; adult and continuing education and other programs'.

A dollar portrayal of this predicament occurs in the legistative Activity Report (4-27-84) published by the Council of Great City Schools. In part, it includes a table of thirty one (31) City school districts, titled City By City Federal Budget allocations.*

Over the period 1980-1984 Federal Budget allocations declined by 8% for the total school districts listed ($1,713268896-$1,517747572) D.C. Public schools lost over the period $12085373 million ($50511209 - $38426436) or 24%; triple that of the declining total for all schools.

For 1986, the School Administration projects $39484000. in federal funds which lowers the loss since 1980 to 22% on a 2% gain.

Added to this is the factor of rising costs. The April 1985 inflation figure (CPI) was 320.1. From the 1980 level of 246.8, the percentage measured advance approximates 30%. To maintain the 1980 level of grant funding amounting, then to $50511209 would require $65,664,565 today. And, we are not yet into the 1986 fiscal year. Since December of 1984, costs have risen, on the CPI table 1.5% (315.5 to 320.1). By 1986, the projection of 5% per year would raise the Index level to approximately 336.0 or 34% over the 1980 fund level ($50511204) amounting to $66163585.

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*Attached

The Grant fund allocation projected by the D.C. Public School system for 1986 is $39,484,000. leaving $28.2 million to be made up either in funding from the operations budget or program alterations. The total, $387.7 million exceeds The Board of Educations request ($366,919.00). Under the Superintendents' requested $381.0, $20.0 would have been applied to asbestos removal, a problem haveing over many of us with awesome potential.

Having reached that conclusion based upon the above, Mr. Chairman and Committee members, kindly permit me to add other data. We have, in the absence of more precise information, given a hard look at the "Free and reduced Lunch figures."

In our opinion this data includes a strong indication of the ratio of low income family children in the systems, and the degree of change in relative pupil populations number. Our purpose, here, is to sharpen the focus on the educational resources required in addressing their wide range of needs.

For the school year 1980-81, 44,786 free and reduced lunches were served. Breakfast has not been included to avoid pupil duplication. Those served represented 42.% of the pupil population of 106,156. In 1984, following changed eligibility regulations, the numbers of pupils receiving free and reduced lunches numbered 34,817 or 40% of the pupil population of 89,431.

However, between those years 1980-81 and 1983-84 total pupil population declined 16%. Free and reduced lunches consumed declined 2%. Clearly there is a high level coustancy of low income family representation in the system.

In this same vein, the City explains its high tax situation. "No matter how the tax burden question is examined, however, D.C. Officials admit that theirs is a high tax jurisdiction. Because of the need to provide services that are normally the responsibility of the states and because of the relatively large proportion of how income residents, the City spends a lot of money." Washington Post (business) April 15, 1985 subject Ranking between eight and tenth among 50 largest cities, it is surrounded by lower tax areas. Also, I might add it is further penalized by artificial economic coustraints imposed and maintained by the Congress.

Deferral to the Citys' figure of $359.5 million leaves, in our opinion, an inadequate funding level for fiscal year 1986.

And so, students, here, and eleswhere are being short changed by the defaulting Federal Government. Meanwhile, as this is being written, the President plans an increased worsening of the local fiscal picture. Under the proposed "...fair tax..." plan, state and local tax exemption for Federal increase tax purposes will be removed.

Pure and simply, that will mean chaos. Washington, D.C. is regarded as a high tax jurisdiction by leading authorities on the subject. Ranking between eighth and tenth among 50 largest cities, it is surrounded by lower tax areas. Also, it is further penalized by artificial economic coustraints imposed and maintained by the Congress.

With respect to all of the forgoing, Mr. Chairman, we are aware of the agreed upon budget before you. None the less, the intent here is to establish the basis for concluding, for the record, that this budget is inadequate to the obligations of the D.C. Public School system.

Table 3

Great City School Federal Budget Allocations (All Agencies)
(In nominal dollars)

	1980-81	1981-82	1982-83	1983-84	Estimated 1984-84
Albuquerque	$ 14,083,285	$ 13,008,692	$ 12,796,123	$ 12,734,290	$ 13,602,498
Atlanta	30,789,703	30,346,293	27,208,245	28,827,657	30,420,555
Baltimore	62,380,343	44,118,340	40,624,258	43,720,038	46,050,413
Boston	30,667,319	24,744,599	24,514,350	26,169,642	27,232,161
Buffalo	25,521,684	27,181,853	20,247,125	21,390,062	22,224,902
Chicago	182,201,840	159,487,692	179,970,256	202,145,000	183,492,482
Cleveland	52,554,632	37,647,731	28,722,441	28,836,953	29,754,084
Columbus	24,812,041	20,289,655	16,633,589	16,959,959	17,994,426
Dade County	80,147,599	62,744,795	62,943,015	73,842,388	72,414,896
Dallas	34,140,269	33,652,709	31,568,753	29,766,297	31,412,891
Denver	21,282,522	15,550,433	16,866,681	17,182,385	16,750,183
Detroit	90,084,170	75,658,412	72,459,534	68,218,577	76,447,254
Indianapolis	N/A	N/A	N/A	N/A	N/A
Long Beach	13,690,607	13,224,291	13,211,153	15,509,792	17,139,329
Los Angeles	187,410,277	155,797,926	156,655,049	173,064,243	182,733,211
Memphis	37,464,175	32,616,642	32,248,403	33,198,610	35,737,947
Milwaukee	34,797,799	31,547,803	25,218,645	25,149,236	28,108,446
Minneapolis	13,397,485	11,848,890	10,631,267	10,799,883	10,878,326
Nashville	14,774,921	13,575,369	13,319,473	12,861,559	13,436,660
New Orleans	31,100,757	29,061,300	24,761,991	27,180,861	33,484,000
New York	389,832,270	336,324,612	337,162,903	375,336,712	409,386,016
Norfolk	16,350,218	12,807,301	15,358,073	13,435,206	14,518,703
Oakland	20,997,840	17,394,179	17,505,516	17,692,432	18,127,619
Omaha	N/A	N/A	N/A	N/A	N/A
Philadelphia	113,491,472	92,953,645	87,516,145	92,963,081	98,597,555
Pittsburgh	24,756,132	22,023,065	20,539,270	19,861,612	18,669,800
Portland	15,172,024	13,466,260	12,155,088	12,357,308	12,695,241
Rochester	17,128,858	16,051,783	13,219,108	13,255,206	13,959,133
St. Louis	35,826,013	31,062,686	24,672,596	24,102,519	23,863,836
St. Paul	13,653,300	11,377,773	9,426,139	10,481,124	9,880,795
San Francisco	22,761,261	21,963,700	18,175,603	18,761,902	19,684,072
Seattle	20,801,028	13,743,228	11,387,815	11,481,333	11,541,942
Toledo	12,195,497	11,036,965	9,904,456	10,764,412	11,563,009
Tulsa	7,707,524	7,677,691	7,234,315	7,641,643	8,437,769
Washington, D.C.	50,511,209	42,800,034	39,174,965	39,969,432	41,249,179
TOTALS	$1,742,486,074	$1,482,786,347	$1,434,032,613	$1,535,661,354	$1,601,489,413

STATEMENT OF JOHN HAMILTON WEST, PH.D., PRESIDENT, DISTRICT OF COLUMBIA ACTION FOR FOSTER CHILDREN, INC.

Mr. Chairman, Members of the Subcommittee, I wish to thank you for this opportunity to testify today on behalf of the District of Columbia Action For Foster Children, Inc. (DCAFC) on a most important topic - the immediate need to improve the quality of foster care services to children and their families in the District of Columbia. DCAFC Board of Directors and I would like to commend the Committee for providing this forum to explore a wide range of urban issues. We are especially pleased that the Committee recognizes the need for appropriating special interest grants to focus on specific urban concerns such as the pilot program (1.3 million dollar grant) that you approved to establish a special truancy center at Stuart Junior High School and the ten million dollar pilot grant to improve the educational programs at the city's Lorton Reformatory.

DCAFC is a non-profit advocate organization that has the following objectives: (1) To take an active role in monitoring the foster care services provided by public and private agencies; (2) To inform the general public about the needs for services and the quality of care that is being provided to foster children and their families and (3) To unify all of the organization's efforts and resources with other child, youth, and family oriented agencies/organizations in the community.

Four years ago, the District of Columbia Auditor's Office (February 25, 1981) released a disturbing report indicating that placement for the majority of the children in the foster care system was long-term and unstable. The average length of stay in the foster care system was 7.5 years. It was clear from this finding that the primary goal of foster care was not being achieved because the majority of the children and youth in the foster care system were spending their childhood in public custody, moving through a series of foster homes, group homes and/or institutions at enormous public expense. On January 29, 1985, the Auditor's Office released another foster care report titled, "Follow-Up Review of the District's Foster Care Program." Again, it was disturbing to DCAFC to learn that children and youth continue to drift within the foster care system for many years. For example, the average number of placements for the 11-15 age-cohort was four. For the 16-19 age-cohort, the average number of placements was eight. This report emphasized that the longer a child remains in the foster care system the greater the probability that he/she will experience numerous placements. It is clear that preventive services to high risk children and their natural families are desperately needed before they become a ward of the city.

Year-after-year, DCAFC has expressed concern before the Senate Committee on Appropriations (District of Columbia Subcommittee) that the computerized child tracking informational system is only partially functioning. This means that the present computerized tracking system cannot locate every child in the foster care system on a given day. DCAFC is appalled and deeply sadden by the city's lack of commitment and respect for the dependent, neglected, and abused children in our community. The children and youth in the foster care system are the community's children and we have a moral responsibility to be good parents. As mature and loving parents, we must know where they are located on any given day! Having a computer system that can be updated seven days a week is the beginning point in developing a quality social service program for foster children. It is simply shocking to know that for a nominal fee of $5,000, the community could be daily informed of the location of every child in the District of Columbia Foster Care System.

Another year-after-year concern is that the District of

Columbia Foster Care System has placed too many of our children in residential facilities far away from home. We must bring our children home and develop community based programs to meet their special needs. There are approximately seventy foster children scattered all over the United States at great expense to the community. The Youth Services Program also has over one hundred and thirty youngsters placed in out-of-State residential facilities. The yearly cost per child in these residential facilities range from $30,000 - $55,000. It is simply economically wasteful and developmentally harmful to children and youth to have them reside in these minimally monitored settings. Following my testimony before Senator Arlen Specter's Subcommittee hearing last year (May 23, 1984), a letter was immediately forwarded to Mayor Marion S. Barry inquiring about the residential placement of our children. As of this date, Mayor Barry has failed to respond to Senator Specter's letter.

A City Auditor's report (February 28, 1985) reveals that we have children and youth at serious risk in our community because the Intake Branch staff of the Child and Family Services Division is unable to perform investigatory responsibilities on a timely basis because staff positions have not been filled. Both D. C. Law 2-22 and the Prevention of Child Abuse and Neglect Act of 1977 require the Intake Branch to investigate neglect reports within 24 hours of their receipt in order to prevent children from being removed from their homes and placed in the foster care system. Each case not investigated means that a child and his family may be at serious risk. In 1983, a nine month old infant starved to death as a result of neglect. This tragic case had been reported to the Intake Branch but the social workers were unable to gain access to the child within the 24 hour period required by city and federal law. The Intake Branch is a most crucial preventive service within the foster care system and it must be fully staffed in order to reduce suffering and/or possibly deaths of children and youth.

In my last year's testimony before Senator Specter's Subcommittee, DCAFC praised the District of Columbia Foster Care System for establishing the Administrative Review Office with the mandate to conduct case plan reviews for all children and families receiving foster care services. DCAFC strongly supported this administrative action because the focus would be on developing permanency plans for all of the children in the foster care system. Unfortunately, it became clear that the Commissioner on Social Services had not taken this program service seriously when she appointed two of her untrained personal friends to manage this office. The office structure has been designed to discourage foster parents from attending the administrative reviews. Specifically, the Administrative Review Office is open during the regular governmental hours when most foster fathers are at work and when the majority of foster mothers are busy with other parental responsibilities such as taking the children for medical examinations, school conferences, therapy sessions, etc. In addition, there is not space or manpower to provide supervised child care while the foster parents are participating in the case review sessions. In general, the Administrative Review Office setting is dull and unattractive reflecting indifference and unprofessionalism. More importantly, there is little research evidence of follow-up on the recommendations made in a given case review session. Consequently, helpful recommendations are often made with little evidence of direct actions being taken to see that recommendations are implemented. The case plan review approach has significant potential to be helpful to foster children because it brings together the child, natural parents, foster parents, agency professionals, etc. to focus on a given child and his family in order that permanent plans may be made to enhance his/her growth and development. In addition, the child and his family receive a powerful personal message that the community is concerned about their welfare and believes that specific actions can be taken to help them. DCAFC strongly believes that this service program can make a positive contribution to the development of foster children if the administrative system is reorganized and placed within the office of the Director of Human Services.

When Mayor Barry's Transition Team recommended that foster care wards who were nineteen and above be terminated from the foster care system, it became increasingly clear that many of these troubled young adults lacked the necessary independent living skills, basic academic skills, and work skills to function successfully on their own. Again, DCAFC supported the Administrative decision to establish Bridge Programs. These Bridge Programs were developed and funded to provide training and counseling to wards nineteen and above to assist them in bridging the gaps from dependence to independence. Unfortunately, there is little objective evidence that these programs are accomplishing stated goals. One Bridge Program, Jones Independent Living Project, has received nearly two-million dollars and the effectiveness of this training job placement program is highly questionable. Throughout the operation of the project, there have been serious management problems. A great deal of violence has occurred at the residential site such as fights, a shooting, etc. DCAFC strongly believes that political friendships should not be the criterion for receiving project grants.

Lastly, DCAFC strongly believes that self-monitoring is biased and change-limiting monitoring. The more than forty groups home facilities for foster care youth must be independently monitored. These residential facilities must have high quality programs to meet the needs of youth who often have multiple and complex problems. Many of these youngsters have emotional/social problems, school learning difficulties, school attendance problems, impluse control problems, etc. Some of these youths only reside at these group home facilities on official paper. That is, they occasionally stop by a given facility and spend their nights away from the group home. Specialized group home environments are needed for our youth that range from highly structured settings for aggressively acting-out youth to small-family type settings for youth who are making steady progress toward independence. Aggressively acting-out adolescents can completely disrupt a group home setting that is not designed to meet their needs. One of the specialized group homes that is needed in the District of Columbia is "Teen-Moms" Group Homes. If these "teenage moms" fail to receive the services that they need, another cycle of family break up will occur at the public's expense. For many of the youth in the foster care system, these group home living environments provide a final opportunity for them to change attitudes, learn social skills, and develop the emotional maturity to function independently in society. It is certainly not cost-effective to allow these group homes to function poorly, thereby having little positive impact on their lives. If we fail to meet these troubled youth's developmental needs, they will remain dependent on society and the public will pay for their care either through the welfare and/or criminal justice systems.

Now for "Action-Oriented" Recommendations:

1. The Chairman and Subcommittee numbers will appoint a professional staff member to work with DCAFC to develop a plan with target dates to follow-up on the specific concerns presented in this testimony. This follow-up plan should be forwarded to the Chairman within fifteen working days.

2. The Chairman and Subcommittee members will approve the funding of a "special interest project" grant to DCAFC to establish a "Monitoring and Accountability Foster Care Project." Working with an approved professional staff member from the Subcommittee, DCAFC will develop a specific project work plan with target dates, a budget, and a listing of a project "blue-ribbon" advisory council to be submitted to the Chairman within twenty-five working days.

3. The Chairman and Subcommittee members will appoint a professional staff member from the Subcommittee to work with DCAFC in developing a listing of specific information needed from the Director of Human Services concerning the operation of the Administrative Review Office. After this information has been obtained or fifteen working days have passed, a visit will be made to the Administrative Review Office. Within twenty working days after this visit takes place, a report of findings should be presented to the Chairman with specific recommendations.

In closing, I will gladly respond to any questions asked. I again thank you for this opportunity to share DCAFC concerns.

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

THURSDAY, JUNE 20, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 11:35 a.m. in room SD–192, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter and Lautenberg.

DISTRICT OF COLUMBIA

COURT SYSTEM

STATEMENT OF HON. WILLIAM PRYOR, CHIEF JUDGE, D.C. COURT OF APPEALS

ACCOMPANIED BY LARRY POLANSKY, EXECUTIVE OFFICER, D.C. COURTS

OPENING REMARKS

Senator SPECTER. Good morning, ladies and gentlemen. I regret the delay in starting the session. We have been occupied with the Judiciary Committee on the nomination of Bradford Reynolds, which has taken some substantial amount of time this morning. So I regret our delay in convening this hearing.

Senator LAUTENBERG. I can verify that the chairman of the subcommittee is always timely. This time, I was resolved that I was going to be here with him.

Senator SPECTER. I believe that timeliness is next to cleanliness.

This hearing is on the District of Columbia 1986 budget for the court system, and we welcome the Honorable William Pryor, the new Chief Judge of the D.C. Court of Appeals. We thank you for joining us today, Chief Judge Pryor.

Appearing with Chief Judge Pryor is Larry Polansky, executive officer of the D.C. Courts.

Our inquiry concerns the operation of the court system of the District, the adequacy of funding to carry on the responsibilities of the court system, the status of the procedures in the trial courts and in the appellate courts, the ability to provide speedy justice in the criminal courts and the civil courts and the domestic relations courts and all branches of the judicial system, and the capacity to render timely decisions on appeal as well as in the trial courts, with particular emphasis upon the issue of public safety and the speedy trial for cases of people who are on bail, posing a risk to the community where they remain on bail, with emphasis on the rights of people who are in detention as to their constitutional right to a speedy trial, and the rights of litigants in private cases, civil cases—private civil cases—domestic relations cases, the wide variety under the accepted maxim that justice delayed is justice denied, and the court system ought to function with sufficient resources to do the job, lest there be a mandamus action by the courts as there was in the famous case of *President Judge Carroll* v. *Mayor Tate*. We would like to avoid that kind of conflict between branches of government, and we will do our best to be of assistance to the judicial system.

I would like to yield at this time to the distinguished Senator from New Jersey, Senator Lautenberg, the ranking member.

OPENING REMARKS OF SENATOR LAUTENBERG

Senator LAUTENBERG. Thank you, Mr. Chairman.

I would ask you to use the language of the day, and don't get into terminology like mandamus. Anyway——

Senator SPECTER. I haven't started using fancy language yet.

Senator LAUTENBERG. I may be motivated. I have heard you use fancy language, Mr. Chairman, in other meetings, and privately, and so forth.

I am pleased, also, to welcome Judge Pryor and Mr. Polansky. I was reminded earlier, Mr. Chairman, that Mr. Polansky has a son who practices law in New Jersey and in Pennsylvania. I think it has to do with the structure of this committee that he gave us that information. Now, I am not sure where he votes yet.

But, in any event, I am pleased to be here to share this hearing this morning. My interest here is that of continuing to learn about problems, because they affect appropriations. So I am pleased to have both of you here, and to listen to what you have to say.

Thank you, Mr. Chairman.

Senator SPECTER. I mentioned the mandamus action, because it is a very, very significant case. Mandamus is a legal procedure used to compel action of a variety of sorts, and it is customarily used to compel the performance of a nondiscretionary duty.

Senator LAUTENBERG. Mr. Chairman, I will take your word for it.

Senator SPECTER. And in a very celebrated case in Philadelphia in the early 1970's, when the judicial system was not getting adequate resources, partially at my urging and the urging of the judicial council of Philadelphia when I was district attorney there, the president judge of the Court of Common Pleas went to court seeking to compel the city council to appropriate sufficient funds.

That was an unprecedented procedure, and a special judge was appointed, Judge Montgomery, previously of the appellate superior court in Pennsylvania, and it established a principle that under some circumstances the courts could compel the legislature to appropriate funds for the courts, which goes to show the importance in our system of having adequate resources for the judiciary.

I don't think we are about to get to that here, but I mention it as a matter of underlying importance.

With that relatively brief introduction, given what Senate subcommittees do, Judge Pryor, we turn to you.

OPENING REMARKS OF JUDGE PRYOR

Judge PRYOR. Thank you. I appreciate the hearing this morning. It is true that this is my first occasion to be here.

My approach to this will be straightforward, because I think it is of that nature, and I don't intend to talk about line items, but simply to state the situation as I see it.

Our court, like most urban courts, is facing increasing numbers of cases to handle, and we are doing our very best to do it with good management techniques and maintain the quality of the courts.

The basic problem that we have is that our court now needs to take a serious look at how we will operate, that is to say, considerable work has been done with the trial court in terms of new judges, new commissioners and new techniques to decide their cases.

What the appellate court has been doing is trying to improve the way we manage our court. A serious concern for the long term is whether we need a new kind of appellate structure, sometimes referred to as the "Intermediate Court," or whether the present structure will suffice.

I do not know the answer to that question at this time, but I can tell you we are working on it.

In terms of the dollars and cents of what we are doing, most of what we have asked for from the other bodies and groups has been approved, or recommended, and we have no serious concern in that light.

So that I would simply summarize, having given you a written statement, with the thought that basically we are trying to maintain the quality of the court, recognizing that we are getting ever-increasing numbers of new cases.

I will be glad to entertain any questions that either of you gentlemen want to ask.

Senator SPECTER. Thank you very much, Chief Judge Pryor.

Let us turn at this point to Mr. Polansky, and then when his testimony has been completed, we will proceed with questions.

Judge PRYOR. Sure.

PREPARED STATEMENT

Senator SPECTER. Your full statement, Chief Judge Pryor, will be made a part of the record, without objection.

[The statement follows:]

STATEMENT OF CHIEF JUDGE WILLIAM C. PRYOR

Mr. Chairman and members of the District of Columbia Subcommittee of the Senate Appropriations Committee, it is my privilege to speak to you today regarding the budget of the District of Columbia Court of Appeals.

The Court of Appeals is requesting an appropriated budget of $3,658,000 for fiscal year 1986, representing an increase of $445,000 and four new positions over the previous year's budget of $3,213,000.

The increase in personal services is $232,000, reflecting a statutory judicial pay raise, the planned 3.5 percent pay increase for nonjudicial personnel, within grade advancements, four new positions, and fringe benefits. The Mayor and the Council have recommended funding for the pay raises and fringe benefits for existing personnel, for within grade advancements, and three of the four positions requested.

The 1986 budget request represents an increase of $213,000 for other than personal services over the 1985 budget of $597,000. In general, we have requested a 6-percent inflationary increase in most areas, additional supplies and maintenance made necessary by a 15-percent increase in filings, some replacement carpeting, more efficient file shelving, and new word processors for the judges' chambers. The Mayor and the Council have recommended funding all of the increases except the word processors, for which the District recommends only $59,000 of the $130,000 requested.

Last year, we predicted that our caseload would increase significantly, partly as a result of the addition of seven new Superior Court judges. In fact, appeals increased almost 250 cases over the 1,580 reported in calendar year 1983. Since the new trial judges assumed their duties late in 1984, it is obvious that 1984 appeals filings increased for other reasons. It is, therefore, quite predictable that our caseload will increase even further during 1985 and 1986, underscoring our need for new personnel. These positions, as is explained in our budget request, are to be used to cope with the burgeoning filings and pending cases by instituting an expedited appeal procedure, and by managing the large increase in pleadings and records which result. Other modern case management techniques, including the summary calendar and computer based control over extensions of time, have been very successful, but without the additional staff we are seeking there can be but one result: an increase in pending cases coupled with longer times for decisions.

We ask that you also note that the city's recommendation would not even provide funding for half of the 10 word processors requested for judges' chambers. Replacement of all word processors will be necessary by 1986, as explained in our budget request: partial funding is not the answer.

We believe our overall request to be reasonable in the light of: the substantial workload increases anticipated in the next year; our minimum needs to address existing workload and priorities: and the judicial and fiscal requirements of the city.

On behalf of the Court of Appeals, I request that the subcommittee give favorable consideration to our realistic fiscal year 1986 request.

OPENING REMARKS OF MR. POLANSKY

Mr. POLANSKY. Thank you very much, Senator Specter and Senator Lautenberg.

First, may I present Judge Moultrie's regrets. We had originally blocked out his time for Tuesday, which had been the original date set. But Judge Moultrie did that by transferring the case to Thursday, which he could not leave. He tried, but could not get away before lunchtime.

Senator SPECTER. Well, I understand that, Mr. Polansky, and I regret the necessity for the change. On Tuesday, there was a protracted hearing in the case of William Bradford Reynolds, which required the delay.

Mr. POLANSKY. We understand that, Senator.

I would like to submit both Judge Moultrie's formal statement and my own for the record, and just give you what I think are the highlights of both of those statements, on behalf of the Superior Court and the court system.

PREPARED STATEMENTS

Senator SPECTER. Without objection, Chief Judge Moultrie's statement and Mr. Polansky's statement will be made a part of the record, and you may proceed.

[The statements follow:]

Statement of H. Carl Moultrie I

Mr. Chairman and members of the District of Columbia Subcommittee of the Senate Appropriations Committee, it is a privilege to speak today on the budget request of the Superior Court for Fiscal Year 1986.

The Superior Court is requesting a total operating budget of $42,440,000 which reflects an increase of $5,024,000 and 29 positions over the 1985 budget. The City is recommending $40,712,000 and only 11 of the positions requested by the Court. This is still 18 positions and $1,728,000 less than what the Superior Court is requesting.

Even with the addition of seven new judges this past year, the Superior Court still finds itself at a very critical point in its 14 year existence. This situation results from:

1. Insufficient support staff, which has become an extremely serious problem;
2. Pending case loads which are at an all time high in several critical case categories;
3. New initiatives (such as the crack down on repeat offenders) and laws which place added duties and responsibilities upon the Court;
4. Increased criminal case activity which results in increases in court workload as well as in higher payment totals of fees which are prescribed by statute (such as juror and witness entitlements);
5. Mandatory pay increases;
6. The effects of inflation on the very basic and absolutely necessary costs of doing business (e.g., supplies, building rental, equipment rental, service maintenance and repair of equipment, etc.).

The details of our request are as follows:

CLERK OF COURT:

Special Assistant and Secretary to the Clerk of the Court (2 positions), $61,000: Consistent with D.C. Code 11-1721, the Clerk of the Court has been delegated the responsibility for the management of all non-judicial staff in the Jury Office, Appeals Coordinator's Office, Marriage Bureau, Attorney Advisors, Library and the Civil, Criminal, Family, Tax and Probate Divisions.

These operational units provide the principal support to the judiciary on a day-to-day basis and maintain official dockets and records of Court proceedings. The present staff of the Office of the Clerk of the Court consists of the Clerk and his administrative assistant. The lack of sufficient staff in the Office of the Clerk inhibits optimal coordination, auditing, monitoring and review of the current procedures as well as the maximum implementation of innovations in the management of Court operations. Additionally, the Court has embarked on the development of essential operations guidelines for consistency, uniformity and continuity of operations and performance. Accordingly, the creation of the position of Special Assistant to the Clerk of the Court (CS-12) is of utmost significance for the strengthening of Court management. It is a much warranted link in the Court's continuous effort to minimize case delay, improve jury management, provide leadership and guidance to Court personnel, and coordinate staff development.

The position of Secretary (CS-8) to the Clerk of the Court will provide the necessary secretarial support for coverage of this most important office.

Courtroom Availability and Interpreter Services Coordinator (1 position), $30,000: Daily, approximately 60 active and sitting retired judges require the use of courtrooms which are at a premium. With courtrooms in four separate building locations, the judges need to be informed of the availability of courtrooms in the Court complex throughout the course of the day. To determine the availability of, meet the need for, and maximize the use of courtrooms a coordinator is required. With the recent increase in the Hispanic population, the international atmosphere of the District of Columbia as our nation's capital, and an unexplained but substantial increase in hearing and speech impaired persons involved with the Court, interpreter services and coordination in the provision of these services has become a major concern of the District of Columbia Courts. A coordinator would be responsible for developing a source list of qualified interpreters for trial and non-trial matters. The Court would implement and expand an emergency interpreter program to provide interpreters for situations demanding the immediate provision of interpreter services in criminal, juvenile, small claims and landlord and tenant situations, and maintain a core of court staff and community volunteers to assist in situations where persons because of language barriers or speech and hearing impediments cannot communicate with the Court. This individual would assist in locating and most efficiently deploying these interpreter services and develop a system and procedure to identify needs and provide services to the many courtrooms and public court offices in the Superior Court.

In order to coordinate courtroom availability and interpreter services, a CS-11 position is requested.

CIVIL DIVISION

Computer Data Entry Clerks (2 positions), $31,000: The Civil Division is currently in the process of developing a computerized information system. This system will have the capability of doing many things which are not now possible because of the time and manpower required to do them manually. The operation of the system will not eliminate or replace functions which are currently being performed by Civil Division personnel but will enable the performance of these functions in a more effective and efficient way. It will give the Civil Division more timely, accurate and comprehensive management information, as well as providing support for many operational tasks.

Over 1,500 pieces of information per day will need to be entered into the computer in the Civil Actions Branch alone. This information includes papers and pleadings filed by counsel, orders and judgments filed by the court, entries recorded on the court file and actions taken by court staff in processing and disposing of civil actions. The data will have to be deciphered, identified, categorized and then entered into the computer. In order to handle this volume, the Civil Division will need two data entry clerks at the CS-5 level.

Bailiff (1 position), $14,000: The Courtroom Support Branch has three Bailiff positions. There are usually 12 active judges and at least two senior judges assigned to the Civil Division. This situation requires that a bailiff be taken from a high volume court (where he or she is greatly needed to work with a clerk). Frequently when courtroom clerks or bailiffs are on leave, there is no staff for senior judges, thereby reducing the capacity of the Court to dispose of cases and wasting a critical resource - judicial manpower. One additional bailiff position is needed to help cover the statutory or high volume courts as well as to assist in regular trial courts when necessary.

New Small Claims Law (3 positions), $57,000: It is anticipated that the increase of the Small Claims jurisdiction from the prior limit of $750 to $2,000 will result in 8,000 more Small Claim filings each year raising the total annual figure to more than 30,000.

If the present staffing of 14 employees would remain at the same level, we could not prevent a backlogged condition from developing, or a severe deterioration of the service now provided to the public in Small Claim matters.

It is anticipated that the newly added Small Claims cases, in the $750 to $2,000 level, as a result of the larger amounts in controversy, will generate much more activity than the same number of cases under the previous jurisdictional limit. There will be more motions filed, more trials, more pleadings and more issues challenged. This will mean more papers to file, more docket entries, more notices to send, more telephone calls to respond to and more litigants to help at the counter. We conservatively estimate that the number of new cases filed will increase by 36% over the present annual filings and that the work load will increase by a larger percentage because of greater activity in the new cases.

Therefore, an Interview and Judgment Clerk (CS-7), a Docket Clerk (CS-6) and a CS-4 Clerk-Typist need to be added to the present Small Claims Branch staff.

CRIMINAL DIVISION

Calendar Clerk (1 position), $22,000: Felony indictments continue to increase at a great rate. During 1984, felony indictments increased by 1,065 from 4,161 during 1983 to 5,226 in 1984. The Felony Branch is currently authorized two calendar clerks, who are responsible for preparing and maintaining court calendars for daily court use. The increase in the case load, together with the additional calendars which have been generated as a result of the assignment of more judges to hear felony cases, makes it imperative that we have a third CS-8 Calendar Clerk in order to keep pace with the work load.

DATA PROCESSING DIVISION

Senior Computer Operator/Shift Manager (1 position), $24,000: Currently, the Superior Court attempts to cover all production shifts on a six day/16 hour schedule with three computer operators. This leads to instances when only one operator is available to run an entire shift's work load. Frequently this results in some application being run incorrectly, which could result, for example, in Judges' Calendars being incorrect or inaccurate and in major court disruptions. Experience has shown that a minimum of two operators are needed to run the work load of each "shift" and to avoid operator errors.

A shift manager with operator experience could insure that all jobs are run correctly and discover errors early enough to allow them to be corrected without impacting court operations.

FAMILY DIVISION:

Child Support Enforcement Case Monitor (1 position), $22,000: In January, 1984, the Court initiated its Child Support Enforcement Unit (CSEU) to automatically initiate enforcement of child support orders where the recipient would otherwise have to hire private counsel. It had been common experience, both locally and nationally, that these recipients, usually single mothers, suffer a serious drop in income after divorce or separation, virtually precluding their hiring private counsel. Their alternative was to join the federal IV-D program, which utilized the Office of the Corporation Counsel to pursue enforcement; this program, while far less expensive than hiring private counsel, was slow and still required considerable effort on the woman's part to file an enforcement claim.

The Court through the CSEU automatically identifies past-due accounts and initiates progressive levels of enforcement action. It has achieved a 70% success rate enforcing support orders, primarily because enforcement begins at the first missed payment, before large arrearages have accrued or the payor has been lost to the system through change of employment or residence.

Successful enforcement requires considerable human involvement, to keep track of payors, to determine which of five different legal actions is appropriate in a given case, to explain the process to employers who are required to garnish wages and to provide a "window on the bureaucracy" for people whose checks are lost, address changed or who simply do not understand the system.

Approximately 40 new cases are added to the system each month. At program initiation, one monitor position was established. By fiscal year 1986, in order to maintain the program at its present level of effectiveness it will require the addition of a second CS-8 Child Support Enforcement Case Monitor.

The program has been extremely well-received: if any complaint exists, it is that the Court has had to rigorously limit access to it because of lack of staff. (Only new orders dated after January 1, 1984, are entered into the system.) The second case monitor is required in order to address new cases which will be added to the heavy case load accumulated for the first year of operation.

Child Abuse and Neglect Program Legal Service Fees, $1,407,000: This, originally grant dependent, program began to be funded as a general fund program in fiscal year 1983. Its annual appropriation, in FY 1983 and FY 1984 was $273,000. This sum provided attorneys for both parents and children in some 7,000 hearings annually, at a flat rate of $30 per hearing, with a limit of three hearings per case per year. (Appointment of attorneys is mandated by D.C. Code, Section 16-2304.)

In anticipation of the passage of the Neglect Representation Equity Act of 1984, $630,000 was appropriated for the program in fiscal year 1985. The new law is intended to bring attorney compensation in neglect cases into line with the current $35 per hour CJA rates. The old rate did not compensate attorneys for any out-of-court time, yet many attorneys reported that heavy client contact was required, which, along with legal research and preparation of documents, was essentially done at the attorney's expense. Cases which required unusually complex, time-consuming hearings were also processed at the attorney's expense. Further, neglect cases, typically, stay in the legal system throughout a child's minority, so that the issue compounded itself as the case went through years of mandated reviews.

It is estimated that in fiscal year 1986, the first full year under the new compensation law, the program will receive claims for payment amounting to $2,037,000. This is $1,407,000 more than is provided in the budget base for this statutorily mandated program.

PROBATE DIVISION:

Auditor (1 position), $25,000: The elimination of special bond requirements under the Probate Reform Act of 1980 has resulted in a dramatic increase in the number of accounts filed. With the current staffing level, the pending audit case load ranges from 1,200 to 1,500 accounts and is increasing. The addition of a CS-9 Auditor position will reverse this current trend of mounting backlogs and will start to reduce the beneficiaries' waiting time for estate distributions.

SPECIAL OPERATIONS (CENTRAL RECORDING) BRANCH:

Recording Technician (1 position), $22,000: There are three employees in the Central Recording Room: one supervisor and two technicians. This staff has operated and maintained the system from its outset (seven years ago) when there were twelve recording units compared to the 61 units presently in operation. The staff no longer has time to service the equipment properly or on a timely basis. Courtroom equipment maintenance is only performed by the staff when it breaks down. This equipment should be maintained on a regularly scheduled preventive maintenance program. The filling of transcript requests is delayed for with the present staffing the location and duplication of the applicable tape(s) can take two to three days.

One CS-7 Recording Technician position will allow time to perform the necessary preventive maintenance, and for the timely filling of tape requests.

MISCELLANEOUS COURT OPERATIONS:

Microform Support (5 positions), $215,000: Concurrent with the increased Court jurisdiction of Court reorganization in 1971, there was an awareness that more modern methods of record storage and record retrieval would be needed. It has been clearly recognized that records would need to be immediately retrievable for much longer periods of time.

Post-conviction motions, writs and appeals are being filed many years after the original decision. There are extensive needs for long-term record availability in providing certified copies of conviction for use in subsequent prosecutions by jurisdictions in the Metropolitan area, as well as in the entire United States. Requests for information on past records has also increased in number as well as in the length of period after an occurrence that the request is made. The ability to effectively respond to these needs is primarily dependent upon on-site storage facilities with effective accessibility.

The lack of on-site storage is starting to cause delays: in motions, etc., getting before the Court; in providing needed certified copies; and in providing information. The type of storage equipment utilized on-site is also contributing to delays through location difficulties. Court jackets for records prior to 1974 are now being stored at the Federal Records Center in Suitland, Maryland and other records are stored in various locations in buildings occupied by the Court. The retrieval of the files from locations other than the main courthouse is costly as well as very slow and time consuming.

Microform technology would provide an effective and desirable means of resolving these situations, in that it would eliminate record storage problems and allow for faster record retrieval.

Specifically, past records would be placed in microform and then be destroyed. Inquiries and proceedings thereafter would be via the microform process.

Microform applications would also provide for faster retrieval of a specific case with the use of a "Page Search-Reader Printer." This device scans film until it comes to the record in question. If documentation is required, the printer will produce the hard copy record, which can then be certified as a true copy.

It is requested that $105,000 be appropriated to purchase the necessary microform equipment, $24,000 for microform supplies, and $86,000 for five CS-6 Micro-Process Clerks who would perform the duties associated with the microform process.

Multi-Door Dispute Resolution Program (10 positions), $260,000: Citizen frustration and dissatisfaction with the legal-judicial system's adversarial approach to dispute resolution for many types of disputes has been increasing in recent years. In large part, this dissatisfaction is related to increasing court congestion, resulting delays in the resolution of cases, complicated legal procedures and rising litigation costs. While a number of alternative programs for the resolution of disputes exist in the District of Columbia, citizens typically are not aware of them. Indeed, many citizens do not know that there are viable dispute resolution options nor do they know which options are best suited to resolve particular types of disputes.

The Multi-Door Dispute Resolution Program, which currently functions under a grant from the American Bar Association that expires in fiscal year 1986, has two primary goals. The first is to develop an integrated system for the screening and referral of citizens involved in disputes incorporating traditional legal remedies as well as a variety of non-traditional techniques such as mediation, arbitration and conciliation. An Intake Center, operating in the Superior Court, provides individualized assistance to citizens, helping them understand the range of options available to them for getting their disputes resolved. A second goal is the development of new dispute resolution options needed by D.C. residents to guarantee them speedier, more economical and more effective means of resolving their disputes. One of the first new options available is mediation in Small Claims cases. Other options are being planned in areas where adequate services do not exist and citizen need is greatest.

The District of Columbia was selected by the American Bar Association to be one of three model cities to establish this Multi-Door Dispute Resolution Program. With initial American Bar Association funding, the Multi-Door Program is expected to divert cases from the Court calendar and to divert other cases prior to filing. It is also anticipated that the number of return visits to the Court by parties for contempt or default hearings will be decreased because research has demonstrated that parties to a dispute are more likely to abide by agreements entered into willingly than by Court order. The services available to citizens through the Multi-Door Dispute Resolution Program will continue to be provided if the costs of basic program services are incorporated into the Court budget.

All significant bar associations in the District of Columbia have been involved in the development of the Multi-Door Dispute Resolution Program. The program is supported by all segments of the bar.

In order to continue this program beyond fiscal year 1985, $204,000 for a staff of ten (1 CS-12 Deputy Director, 1 CS-9 Legal Intake Supervisor, 1 CS-9 Dispute Resolution Specialist, 1 CS-8 Legal Intake & Referral Assistant, 1 CS-7 Dispute Resolution Assistant, 1 CS-6 Secretary, 3 CS-6 Legal Intake Specialists and 1 CS-5 Receptionist) and $56,000 for other program operating expenses is requested.

MANDATORY PERSONAL SERVICE INCREASES FOR EXISTING STAFFING:

Within-grade Advancements, $387,000: This funding request is necessary to provide for the within-grades which are required by law to be given to eligible employees. The Court cannot absorb this mandatory cost. To do so would mean that 15-20 existing critical court support positions would have to be held vacant when employees leave and would, inevitably, result in a significant cutback in the services the Court provides to the citizens of the District of Columbia.

Reallocations, $452,000: In conformity with Title 11, Section 1726 of the D.C. Code, a number of positions in the Superior Court must be reclassified to make them comparable to "other employees in the ... Federal and District of Columbia Governments occupying the same or similar positions ...." The additional annual personnel compensation and benefits cost for implementing these reclassifications would result in an increased funding need of $452,000 in fiscal year 1986.

Judges' Pay Raises, $246,000: A Superior Court judge's rate of compensation is, statutorily, 90% of the rate prescribed for a judge of the United States District Court (D.C. Code, Sec. 11-904(b)). The following summarizes the two most recent judges' pay raises, neither of which has yet been provided for in the appropriations base of the Superior Court.

Effective Date	% of Increase	Number of Judges Affected	Annual Cost of Increase
December 18, 1982	4%	44	$112,000
January 1, 1984	4%	51	134,000
Total			$246,000

(The Court has submitted a supplemental budget to fund this mandatory expense in fiscal year 1985.)

FY 1986 Pay Adjustment, $1,046,000: In order to provide for the projected October 1985 3 1/2% pay increase $1,046,000 is requested. If the salary increase is not funded, the Superior Court will have to eliminate at least 50 staff positions during a period when ever mounting and record high pending case loads exist. We are already experiencing accelerated criminal case filings resulting from an intensified city-wide crack down on crime and criminals. Cut backs on the staffing level of the Superior Court under these conditions would dramatically and adversely affect the criminal justice and public safety systems of this community.

Overtime Pay, $75,000: Numerous statutes and Superior Court Rules require that certain operations of the Court (e.g., criminal arraignments, new juvenile referrals, small claims) be open to conduct business on weekday evenings, holidays and on Saturdays. These services generally require services of the financial unit and Social Services as well as normal courtroom operation support personnel. Previous position reductions and vacancies created by inadequate funding have made it impossible to cover these hours through the use of "FLEX" time. Overtime is the only possible solution and it is estimated that the cost of such overtime will approximate $75,000 in FY 1986.

SUPERIOR COURT-WIDE (OTHER THAN PERSONAL SERVICE) INCREASES:

Supplies and Materials, $33,000: Actual supply costs amounted to $336,891 in fiscal year 1984. With inflationary increases of 6% anticipated in fiscal years 1985 and 1986 we project that the cost of supplies and materials will amount to $379,000 in fiscal year 1986. Since the budget base is funded at $346,000, a $33,000 increase is necessary for this very basic cost of doing business.

Building Rental, $31,000: The Social Services Division, in addition to its primary base of operation in Judiciary Square, has three field units from which it provides its various probation and other services. The Court has been advised that the full cost of the leased space for these three field units in the Northwest, Northeast and Southeast sections of the City will amount to $100,000 in fiscal year 1986 - $31,000 above what is currently provided in the base.

Dictation System, $22,000: A new dictation system is required to replace the existing dictation equipment in the Social Services Report Production Center (RPC). The present system has been in use for over five years. During that time, the RPC, in producing over 50,000 judicial reports, will have taken the present equipment up to the limit of its expected useful life. Both from the viewpoint of the amount of repair and technological improvements, this equipment is worn and outmoded. In order to provide the support expected of the Division in aiding the judiciary in the sentencing process, the existing equipment needs to be replaced.

Screening and Diversion Program, $11,000: In fiscal year 1982, after several successful years as a grant funded operation, the Screening and Diversion Program received appropriated authorization. In fiscal year 1985, the program is being financed at the level of $233,000. This is to request funding for the projected increase in the cost of contractual services due to inflation ($11,000) - a modest 4.7% increase.

Cash Registers, $20,000: There are currently four cash registers, located in the four Court finance offices, each of which has been in service for more than ten years and requires numerous service maintenance calls every year to correct breakdowns and malfunctions. With the new types of registers now available, the Court would be able to gather valuable statistics, a feature not provided with the existing machines. However, the most important improvement will be better accountability of revenue receipts through the use of an automated time and dating on all cash register receipts and integration of accounting records with our computer system. $20,000 is required to purchase the four cash registers.

Service Maintenance Contracts and Repairs, $63,000: The actual cost of office machinery maintenance and repairs amounted to approximately $350,000 in fiscal year 1984. Anticipating a 6% per year inflation rate increase for fiscal years 1985 and 1986, $63,000 above our base will be needed.

Juror Fees and Entitlements, $275,000: During fiscal year 1984, when 43 of the 44 authorized judicial positions were filled, juror fees and entitlements amounted to $2,333,000. In fiscal year 1986, we expect to have 51 judges on board - an 18.6% increase in judicial availability. The demand for, and therefore the cost of, jurors is expected to increase by 30% to bring the anticipated fiscal year 1986 expense to $3,044,000 - $275,000 above our $2,769,000 base.

Witness Fees and Entitlements, $47,000: Actual fiscal year 1984 witness fees and related expenses amounted to $1,306,000. With added emphasis on addressing the City's criminal concerns and an 18.6% increase in the number of judges on the bench it is conservatively estimated that witness costs will rise in fiscal year 1986 to a total of $1,549,000 - $47,000 above the current base allocated for this purpose.

Equipment Rental, $23,000: During fiscal year 1984, equipment rentals amounted to $419,500. To off-set the anticipated increase of equipment rental expense due to inflation, an additional $23,000 will be required in fiscal year 1986.

Law Books, $37,000: In order to maintain the Court's legal and general reference libraries, just to satisfy its basic reference needs, $37,000 is required. Maintaining existing law book collections requires an accelerated level of expenditure each succeeding year in excess of the normal annual rate of inflation. With the removal of the United States Attorneys' operation from the District of Columbia Courthouse, $25,000 of the $37,000 is required to off-set the $25,000 support provided the Court annually by that office over the last several years through the purchase of law books in exchange for U.S. Attorney use of the Superior Court library.

Word Processors, $105,000: Although almost every unit of the Court needs modern equipment, in five high volume operations of the Court, word processing systems are critically required. Each of these high volume functions will operate more efficiently and economically with the addition of this capability.

Public Information Brochures, $20,000: The Council for Court Excellence developed, and has provided the Court with copies for initial distribution, of several public information brochures on such subjects as small claims, probate and general court operations and services. In fiscal year 1986, the Court will be responsible for printing these handouts as well as fliers on additional subjects (e.g., landlord and tenant procedures and criminal matters, etc.). To provide for sufficient quantities of these brochures $20,000 is needed. Informing the public in this way is a very cost efficient means of reducing the time and effort necessary to process the work and cases associated with these subject areas.

In closing, Mr. Chairman, I wish to thank you and other members of the Committee for the kind consideration you have shown the Superior Court in the past and hope you will look favorably upon the Court's request for this year.

STATEMENT OF LARRY P. POLANSKY

Mr. Chairman and members of the District of Columbia Subcommittee of the Senate Appropriations Committee, I thank you for the opportunity to speak today to the budget of the District of Columbia Court System.

The Court System is requesting a Fiscal Year 1986 operating budget of $21,490,000, an increase of $8,587,000 and 76 positions over Fiscal Year 1985. The City is recommending $15,437,000 and only one additional position. I must point out that more than 60% of the increase ($5,219,000 and 69 positions) is for the transfer of building management and security responsibilities to the Court from the Department of Administrative Services which the Mayor asks be excluded, without prejudice, until negotiations have been completed. (A position with which we agree.) Another 36% and 5 positions of the increase is for the Criminal Justice Act program which provides for the defense of indigent adults and juveniles in criminal matters.

This results in an actual request for the D.C. Court System operation of $252,000 and 2 positions (less than 3% of the increase requested). The City is recommending $196,000 and one position.

Included in this $252,000 request is $112,000 for several critical areas such as: $44,000 for 2 official court transcriber positions; $34,000 for judicial liability insurance; $25,000 for training; and $9,000 for state membership dues in the National Center for State Courts.

In detail, our requests are for:

Official Court Transcriber (2 positions), $44,000: The Transcription Section of the Court Reporter Division consists of three transcribers and a supervisor. This Section is responsible for furnishing transcripts from the many courtrooms and hearing rooms which are electronically equipped with multi-track recorders and where court reporters are not assigned. The Transcription Section is equipped with several word processing units and a single printer. With the present staffing, two-thirds of transcript requests must be mailed along with the tapes to an outside transcribing firm, which results in loss of control over the process. The Court must pay delivery costs for the work sent outside and for it to be returned. The requested staffing would result in the Court preparing all transcripts requested from tape recorded proceedings in-house. This would be a much more secure, efficient and timely process. Two additional CS-8 Official Court Transcriber positions will provide the Court with this required in-house capability.

Within-Grades, $39,000: This within-grade funding request is necessary to off-set within-grade advancements which are required by law to be given to all eligible employees.

Fiscal Year 1984 Executive Officer Pay Raise, $3,000: Title 11-1703(c) of the D.C. Code states that the Executive Officer is to be compensated at the same rate as an associate judge of the Superior Court. The judges' rate of compensation is to be 90% of the rate prescribed for a judge of the United States District Court (D.C. Code, Sec. 11-904(b)). During fiscal year 1984, a 4% judicial pay increase became law. Time did not permit us to include this statutorily mandated cost in our fiscal year 1985 budget request and, therefore, the increase is not in the budget base.

FY 1986 Pay Adjustment, $84,000: In order to provide for the projected 3 1/2% October 1985 pay increase $84,000 is requested. If the salary increase is not funded, an already dangerously understaffed court support organization, consisting principally of court reporters, shall have to be even further reduced. This would call for a reduction of at least four court reporter positions and would represent a 10% reduction in that vital work force.

Supplies and Materials, $2,000: This is to request funding for the projected increase in the cost of supplies due to inflation. We anticipate inflationary increases of 6% in both fiscal year 1985 and fiscal year 1986. This will result in supply purchases costing $16,000 in the budget year - $2,000 more than is currently in the base.

Printing and Reproduction, $12,000: To provide for the anticipated effect of a 6% per year inflation rate on the cost of printed material over the two year period of 1985 and 1986, plus the expanded need for Criminal Justice Act forms, $12,000 is requested. Over 95% of the D.C. Court System's annual printing cost is for the publication of the District of Columbia Courts' annual report and the printing of the "Criminal Justice Act Appointment and Claim" forms which are basic to the operation of the Criminal Justice Act program - both required by statute.

National Center for State Courts Membership (NCSC) Charge Increase, $9,000: Membership in the NCSC provides the Courts with research and information services, a variety of publications and library services unavailable from any other source. The Center conducts research projects on courts and court related subjects, serves as a valuable technical assistance resource and is a clearinghouse for the exchange of information dealing with court administration, practices and procedures. The 1986 assessment for the District of Columbia Courts is $9,000 above the funding level provided by the initial appropriation which was made in fiscal year 1982.

Training Seminar, $25,000: It has become increasingly apparent that, in order to efficiently and effectively provide essential training for the judges, hearing commissioners and key staff of the District of Columbia Courts, it is necessary to conduct an intensive three day seminar (over a long weekend) at least once a year. In order to provide for the logistical aspects of such a training session and procure the services of appropriate instructors, $25,000 is required.

Professional Liability Insurance for Judges and Hearing Commissioners, $34,000: In the case of Pulliam v. Allen, a landmark, precedent setting court decision was handed down which determined that judges (and it is assumed hearing commissioners making similar judgments) can be found personally liable for the professional decisions they render in connection with their court positions. In order to provide professional liability insurance for each of the 85 active and retired sitting judges and hearing commissioners of the District of Columbia Courts, $34,000 is requested.

Security, Custodial, Maintenance and Utility Costs to Operate all Court Buildings (69 positions), $5,219,000: The District of Columbia Courts function out of four buildings located in Judiciary Square. At the present time, the City's Administrative Services Department is appropriated the resources and given the responsibility to provide the following services to operate our four buildings:

Security
Custodial Work
Elevator Operators
Landscaping
Utilities
Restroom Supplies
Cleaning Supplies
Window Washing
Pest Control/Exterminating

The Courts continue to be dissatisfied with the degree and quality of the security, custodial and landscaping services provided. It is the Court's opinion that if these and other related services were under the direct control of the Courts that the quality of service would improve. However, we also realize that added resources are necessary to satisfy our basic expectations and requirements.

The total cost of operating the four buildings will amount to $5,219,000 in fiscal year 1986 and is itemized as follows: 69 employees at $1,304,000, various supplies amounting to $36,000, utility services of $2,200,000, $1,652,000 for contractual services and equipment purchases of $27,000.

CRIMINAL JUSTICE ACT PROGRAM, $3,116,000

Appointment of and Claim Processing for Indigent Criminal Defense (5 positions) $121,000:

Fees examiners and File Clerk, Criminal Justice Act Finance Unit (3 positions) $56,000: The Criminal Justice Act Finance Unit has been staffed with five employees (four fees examiners and a unit chief) since it was established in fiscal year 1975. The number of vouchers processed through this unit has steadily increased during each of its ten years of operation (for example, 17,600 vouchers in fiscal year 1978, 19,300 vouchers in fiscal year 1980, 22,500 vouchers in fiscal year 1982, 28,700 vouchers in fiscal year 1983, and 29,100 vouchers in fiscal year 1984). The unit is no longer able to keep pace with the work load. We project that during fiscal year 1986, 32,000 claims will be submitted to the unit for examination and payment. In order to maintain the process and control of this extremely heavy flow of vouchers and perform thorough examinations of these claims we desperately need 2 additional Fees Examiners (CS-7). In addition, a CS-4 File Clerk is required.

Criminal Justice Act Plan, $65,000:

Title 11-2601 of the D.C. Code authorizes the Joint Committee on Judicial Administration to prescribe a plan for furnishing representation of indigents in criminal cases. The current plan, as approved by the Joint Committee on Judicial Administration, calls for the establishment of the Criminal Defense Assignment Unit. This program is designed to relieve judges of the conflict inherent in the CJA appointment process.

After thorough review and analysis on the part of the Courts and Bar, the Superior Court Board of Judges has determined that a defense attorney certification and appointment process, separate from the judiciary, is required. It is recommended that a Director and a staff assistant be provided to administer the multi-million dollar criminal defense program which directly impacts on the quality of justice in the District of Columbia Courts.

Director, Criminal Defense Assignment Unit (1 position) $43,000: The Director must assume responsibility for the overall management of the Criminal Defense Assignment Unit, including the operation of an effective assignment system for adequate legal representation of indigent defendants, the administrative oversight of the attorney qualification and case assignment processes, and coordination of this program with the Public Defender Service, attorneys from the private sector, judges and several divisions within the Courts. Given the scope of management and other duties to be fulfilled, this position requires funding at the CS-13 level.

Staff Assistant, Criminal Defense Assignment Unit (1 position) $22,000: In order to enable the Director of the Criminal Defense Assignment Unit to effectively carry out a broad range of program responsibilities, skilled support staff is essential.

Due to the high volume of detailed work and the fact that the accuracy of unit information impacts the 800 plus attorneys presently on the master assignment list, a staff assistant capable of participating directly in the work of the unit is needed. The level of training and experience required calls for expertise at the CS-7 level.

Criminal Justice Act Program Fees, $2,995,000: Beginning with fiscal year 1980, the Criminal Justice Act program has operated on a cash basis. The annual payments made during fiscal year 1978, 1979 and 1980 averaged approximately $3,500,000. Payment levels for fiscal years 1981, 1982, 1983 and 1984 were $4,188,500, $4,980,000, $6,354,600 and $8,189,000 respectively. During these four most recent fiscal years, additional funds were obtained through supplemental appropriations. We anticipate that this dramatic escalation of program payments will continue during fiscal year 1985 and 1986. Effective October 12, 1983, the allowable legal service hourly rates were raised from $30 per hour for "in court" time and $20 per hour for "out-of-court" time, to $35 per hour for all representation. In addition, maximum case limits were, in most cases, more than doubled. The full impact of these revisions in the rates of pay will be felt by fiscal year 1986. With the base level of funding for the program in fiscal year 1985 set at $10,422,000, an increase of $2,995,000 is needed to meet the $13,417,000 in claims expected to be processed for payment in fiscal year 1986. These are not discretionary or controllable costs since representation of indigent defendants is constitutionally mandated and the rates paid are statutory.

We would also request budget language, consistent with prior years, which would provide: that Criminal Justice Act funds and Child Abuse and Neglect funds shall be available for obligations incurred in each fiscal year since inception; and that $1,500, each, be available to the Chief Judges and the Executive Officer for official purposes.

Last, but not least, I would like to call your attention to our capital budget request for fiscal year 1986 which seeks the initial funding for two capital projects that are projected to ultimately cost $2,304,000. Together these projects will permit the Courts to convert existing space in the District of Columbia Courthouse to relieve crowding and provide additional courtrooms which will facilitate the scheduling of trials and hearings.

On behalf of the Joint Committee on Judicial Administration, I want to thank you for your consideration of our requests and ask that you look favorably upon this year's submission.

JUDGE MOULTRIE'S CONCERNS REGARDING FISCAL YEAR 1986 BUDGET

Mr. POLANSKY. Basically, the District government has been responsive in its budget for the Superior Court with perhaps two exceptions.

The major exception, and the item that Judge Moultrie would emphasize if he were here is that 18 of the 29 positions that Judge Moultrie requested, were not funded or recommended for funding by the District. Those 18 positions represent various slots that provide support to the operation of the court.

The addition of judges and hearing commissioners to the court's judicial and quasi-judicial staff, has made it even more important that support staff be there, and Judge Moultrie and I both feel very strongly that if there is anywhere that we need additional help, beyond that which the District has provided in the budget that they recommend, it would be additional staff positions to support the court.

I would like to read you just one paragraph of his statement. Judge Moultrie says:

> We have an opportunity with the added judges and commissioners to attack the case backlogs and delays, but without the supporting resources we are requesting, our efforts will be fruitless. I urge you to recognize the severity of our problem and to act to provide the tools to do the job you expect for the District of Columbia courts.

There are some additional minor requests that the District has not funded, but we believe we can live with what the District has recommended in those areas.

FISCAL YEAR 1986 BUDGET REQUEST FOR D.C. COURT SYSTEM

As to the D.C. court system, the administrative budget that I am responsible for, of the $21 million requested, when one eliminates about $5 million that represent security and maintenance transfer from the District to the D.C. courts, which the Mayor has asked we hold in abeyance until we can come to a compromise figure that all would agree is reasonable, we would ask that the matter be set aside as well until we know just how much it will cost. We would like to transfer, and the Mayor would like to transfer to us, the responsibility for our own security in the building and our own custodial maintenance responsibility. However, I must report that we are far apart at this point on how much it really costs to do that and until we know that there is no sense moving forward.

Most of the remainder of the budget represents Criminal Justice Act funds, over which we have no control, for legal counsel for indigent criminal defendants. What is left is only a request for an additional $252,000 for the D.C. court system budget, of which $140,000 is mandated. It all boils down to what we are asking for that is not funded is a court transcriber position, and some funding for judicial liability insurance as a result of the *Pulliam* case, which exposes the judges of all of the country's courts to additional personal liability.

I must tell you, however, that in the House hearing it was suggested that perhaps statute language by the District of Columbia, that provided for indemnification and/or immunity for its judges would more than suffice, rather than purchasing liability insurance for the judges.

And then I would further ask for budget language, consistent with prior years that would permit the Criminal Justice Act funds, that is, the indigent defense lawyers' funds and the new child abuse and neglect representation funds to be available to pay for obligations of prior years. Without that language, we are restricted to payments for current year expenses, and that we have language consistent with last year, for the discretionary fund for official purposes.

Finally, we have been carrying the hearing commissioner authorization from year to year through language in the appropriations bill. We would hope that this year's bill language would provide for permanent authorization for the hearing commissioners.

With that, I would take any questions that you may have.

Senator SPECTER. Thank you very much, Mr. Polansky.

DELAY IN APPELLATE DETERMINATIONS

Chief Judge Pryor, I note that the time on appeal has increased steadily over the past decade, with a 311-day delay in 1974, to a 513-day delay in 1984, and I ask you what can be done about it. First, I would ask if those statistics are correct.

Judge PRYOR. Yes.

Senator SPECTER. My question is, don't you think that—is the 513-day delay an average time of delay?

Judge PRYOR. It is, and that goes to the heart of my brief statement, because we see that as a major problem right now.

AVERAGE BACKLOG IN APPELLATE CASES

Senator SPECTER. If 513 days is the average, what is the longest delay that there has been on an appellate determination?

Judge PRYOR. Not much longer than that. We say average, and average tends to mean the middle. Let me be accurate about that. I have it here.

Senator SPECTER. What is the longest delay of any case handed down by the Appellate Court in 1984, if you know?

Judge PRYOR. I don't know, but I can tell you that we have some as old as 2 years, and there are not very many, so that average is probably not the correct term, because that tends to mean the midpoint.

REDUCING THE CASE BACKLOG

Senator SPECTER. Well, Chief Judge Pryor, it seems to me that it is intolerable to have a 2-year delay in an appellate decision, and it is intolerable, totally unsatisfactory, to have a delay of 513 days as an average.

What can be done about it?

Judge PRYOR. We have already started, I am happy to say. I don't, however, think I want to approach in the mode of giving excuses, because I don't see it as a court failing. When I look for the reasons for it, because that troubles me as well as it does you, we clearly have more activity now in the trial courts than we have had in the past, and obviously with judges added, trial commissioners added, and new administrative review required, further delays are headed our way.

Indeed, I don't think we have felt the full brunt of the added trial judges yet.

Now, what can be done. We have already started to shorten the time for appellate review by creating what we call an expedited calendar, through which we take out the simple cases and move them through more quickly.

You should know, as well, that we have been operating with eight judges rather than nine. To meet that handicap, we have scheduled more sittings for the eight judges we have.

SITTING IN PANELS

Senator SPECTER. Do you sit in panels?

Judge PRYOR. We sit in panels of three.

Senator SPECTER. Chief Judge Pryor, there must be cases in that group where defendants, who have been convicted and are having their appeals held, are released on bail pending completion of the appellate process. Aren't there?

Judge PRYOR. A few. For the most part, however, we are talking about people who are incarcerated.

NUMBER OF PERSONS RELEASED PENDING APPELLATE PROCESS

Senator SPECTER. Well, how many defendants are released on bail pending the appellate process, after conviction?

Judge PRYOR. I cannot give you a figure today, but I can get it for you.

Senator SPECTER. Well, I would be interested to know, and I would be interested particularly with the two subdivisions of that. One is, how many of those defendants are released on bail, having been convicted of crimes of violence, and how many, if any, of those while on bail have been charged with subsequent offenses while their appeals are unresolved?

Judge PRYOR. I understand your question, and I will get the information.

[The following materials are in response to several questions regarding the average time for appellate cases (from filing to disposition) as well as the longest times. The response to the question regarding crimes charged while the defendant is on bail pending resolution of an appeal will require additional research and will be provided as soon as the research is completed.]

MEASURES OF TIME ON APPEAL

MEMORANDUM July 9, 1985

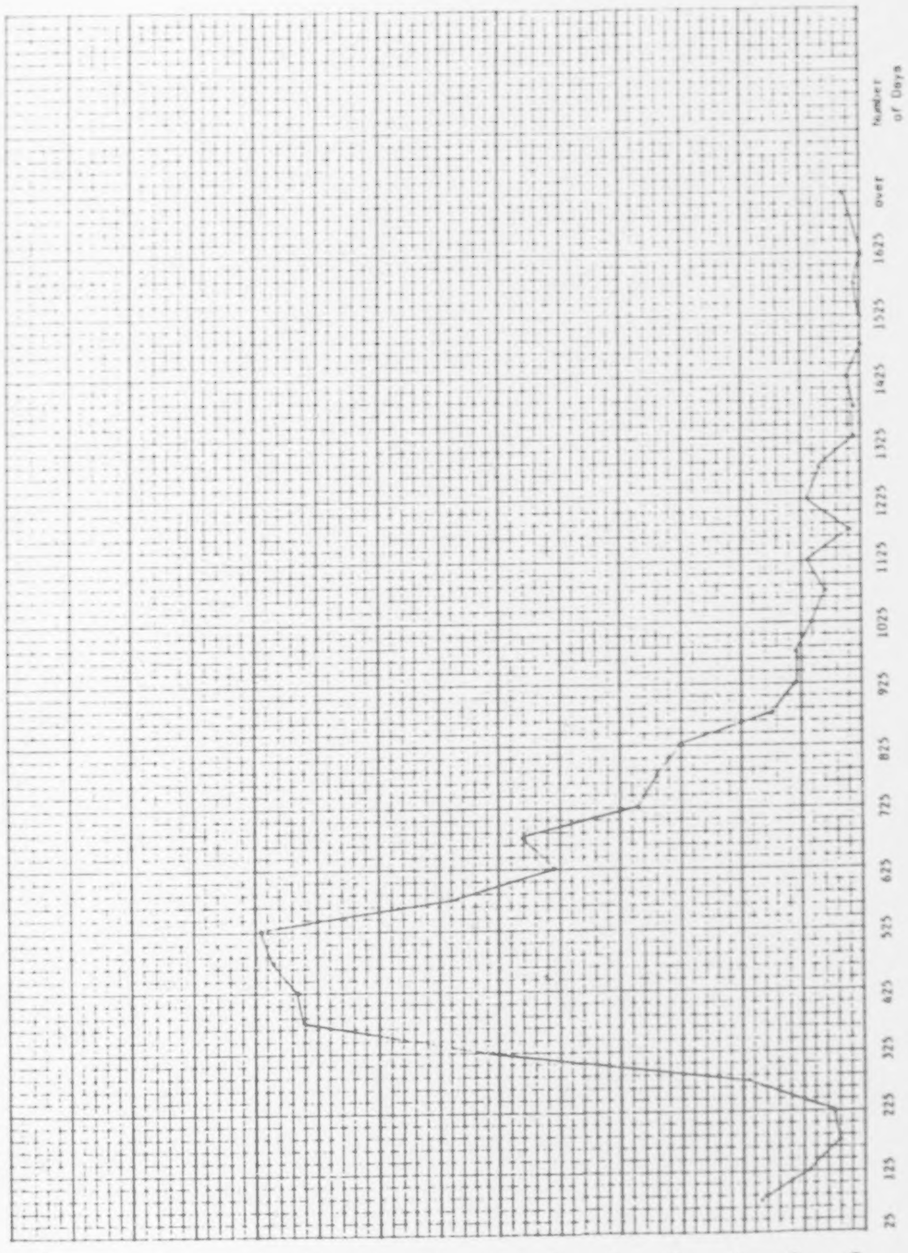
TO: Larry Polansky, Esq.

FROM: Alan I. Herman

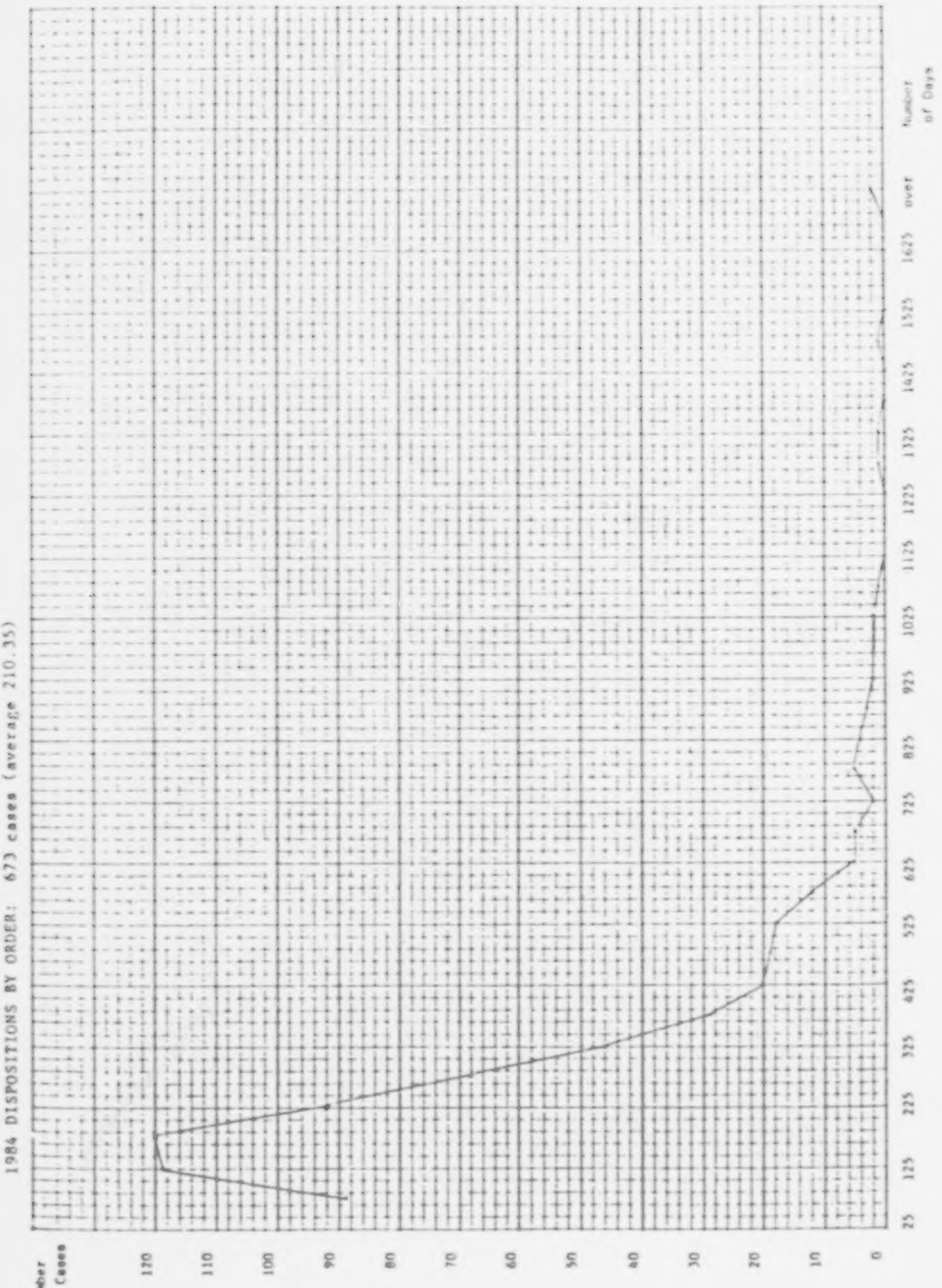
RE: Measures of Time on Appeal

Attached are graphs depicting time on appeal in the District of Columbia Court of Appeals for the calendar year 1984. The Annual Report of this court indicates the average (mean) time on appeal was 513 days for cases decided by opinion, memorandum opinion and judgment, and judgment. These are essentially cases which are decided on the merits. However, they constitute less than 60 percent of all cases disposed of in 1984. Another method of disposition (orders) accounted for almost 700 cases--for which the average (mean) time on appeal was 210 days. A weighted average of all dispositions during 1984, therefore, is 380 days.

Another measure frequently used by courts, and sometimes advocated as a more accurate measure, is median time on appeal. In the District of Columbia Court of Appeals, median time for cases disposed of on the merits in 1984 was 469 days; and for those disposed of otherwise, 160 days. The median represents the "middle case" of all cases disposed of in that category. Therefore, half of the cases took more time to disposition; and half took less time. The charts graphically depict where the vast majority of cases fall in terms of disposition time.



1984 DISPOSITIONS BY OPINION, MEMORANDUM OPINION AND JUDGMENT, AND JUDGMENT: 859 cases (average 512.59)


1984 DISPOSITIONS BY ORDER: 673 cases (average 210.35)
Number of Cases
120
110
100
90
80
70
60
50
40
30
20
10
0
25
125
225
325
425
525
625
725
825
925
1025
1125
1225
1325
1425
1525
1625
over
Number of Days

Longest Time It Took Case to Reach Disposition

MEMORANDUM

July 9, 1985

TO: Larry Polansky, Esq.

FROM: Alan I. Herman

RE: Query: What was the greatest number of days it took a case to reach disposition in the D. C. Court of Appeals in 1984?

Case No. 13810, Gregory Lucas v. United States, (consolidated with No. 13888 and No. 82-704) was decided on May 24, 1984, spending 2,101 days in the appellate process.

Attached are copies of the dockets in the Lucas case. The Notices of Appeal were filed on 8/23/78 in No. 13810, on 9/7/78 in No. 13888, and on 4/14/82 in 82-704. Almost two years' time was involved with the preparation of the reporters' transcripts filed; another 1-1/2 years' time was related to the problem of securing transcript from a court reporter (Myrtle Graham) who was unable to locate the notes to be transcribed. On 10/25/82 a substantive motion to consolidate Nos. 13810, 13888, and 82-704 and for summary reversal was filed. Theorder consolidating the three cases, denying the motion for summary reversal, and commencing the briefing schedule was filed on 6/1/83. Appellant's brief was filed on 9/23/83; appellee's brief on 11/10/83. The case was argued on 2/17/84 before Judges Newman, Nebeker, and Ferren. Their opinion, affirming the judgments on appeal, was released on 5/24/84.

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13816

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

4DS-1983

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA 13816.

TITLE OF CASE	ATTORNEYS FOR APPELLANT
GREGORY A. LUCAS, Appellant, v GEORGE HOLLAND, Appellee.	APPOINTED BY THIS COURT: ~~Kenneth Burchfiel, Esq. (NC)~~ ~~2914 M St., N.W. (7)~~ ~~333-8993~~ ~~John H. Spaulding (NC)~~ ~~910 - 17th St., N.W. (6)~~ 466-5330 • Joel DuBoff, Esquire (9/24/80) NUNC PRO TUNC 8/15/80 ~~3913 Sproell Ct.~~ ~~Kensington, MD. 20795~~ ~~949-5125~~ 121 Congressional Lane, Ste. 500 Rockville, MD 20852 ~~831-3636~~ 4[illegible]-7131

VIDE: 13888 + 82-704

	ATTORNEYS FOR APPELLEE
No. Below: SP-833-78 Court Below: Criminal Division Judge Below: Eugene N. Hamilton Date of Judgment: July 31, 1978 Notice of Appeal filed: August 23, 1978	Michael W. Farrell * Robert H. Klonoff (53-1223

DATE	ACCOUNT OF APPELLANT	RECEIVED	DISBURSED	REMARKS
	FP			

13810

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

13

ADS-1983

13810

DATE	FILINGS—PROCEEDINGS	FILED
8/28/78	Record on appeal (n)	
9/20/78	ORDER appointing Kenneth Burchfiel, Esq. as counsel for appellant. (HEK)	
12/14/78	LETTER to counsel for appellant commencing briefing time from this date (ALS)	
12/21/78	ORDER vacating appointment of Kenneth Burchfiel, Esquire, appointing John H. Spaulding, Esquire and consolidating with appeal No. 13888(	
10/23/79	Motion of appellant to extend time to file brief to Nov. 2nd (m-23) - pp	
10/30/79	GRANTED/cog mj	
11/2/79	Status report of appellant and motion to extend time to file brief to Dec. 2nd(m-2) mlh	
11/14/79	GRANTED/cog (fvf)	
12/7/79	Motion of appellant to extend time to file motion to withdraw to Dec. 10th mlh	
12/12/79	Motion of appellant for transcription of full record (m-11) mlh	
12/28/79	ORDER referring mot to trial court for transc; the time for filing aplt's br. is ext. for 60 days. (Ky) fvf	
3/11/80	ORDER that counsel for appellant shall show cause by 3/31/80 why this consolidated cause should not be dismissed (NW)	
3/31/80	Response to show-cause order and to extend time to file brief to May 31st(m-31)mlh	
4/18/80	ORDER ext time for filing aplt's br. to and inc. 5/31/80. THE otsc shall remain in effect pending the filing of aplt's br. (Nw) fvf	
6/2/80	Motion of appellant to extend time to file brief to Aug. 1st(m-30)ml	
6/19/80	GRANTED/cog (fvf)	
7/17/80	Supplemental record #4 (29 pages of transcript-Bowman) ag	
8/1/80	Motion of appellant to extend time to file motion for appointment of new counsel to August 15th (m-26) mlh	
10/31/80	ORDERED sua sponte that appellant's brief is extended to 11/24/80 (NW) - tag	
11/26/80	Motion of appellant to extend time to file brief to Dec. 19th(m-24)mlh	
12/04/80	GRANTED/cog (fvf)	
12/24/80	Motion of appellant to extend time to file brief to Jan. 15th(m-22) mlh	
01/05/81	ORDER extending time for filing aplt's br. to and inc Jan. 16, 1981 NFX (Nw) fvf	
1/16/81	Motion of appellant to extend time to file brief or other pleading to Feb. 6th (m-14) mlh GRT/cog tag	
2/23/83	ORDER dirg counsel, on or bef 3/4/83, to file a stmt re status of remand proceedings in trial court (Nw) fvf	
2/25/83	Motion of appellee in #82-390 to consolidate with this appeal and #13888 (m-25) ag	
3/7/83	Statement of appellant's counsel re status of remand proceedings(m-2) mlh	
5/17/82	Note: Judgment in 82-390 affirming; dismissing as moot the motion to consolidate 13810 and 13888 with 82-390 - cmj	
06/01/83	ORDER consolidating appeal no. 82-704 with nos. 13810 and 13888 and denying motion of appellant in 82-704 in all other respects; brief of appellant in these consolidated appeals shall be due by July 11, 1983 (FePy) cwc	
7/8/83	Motion of appellant to extend time to file brief to August 25th (m-8) acg	
7/13/83	ORDER extg time for filing aplt's br to and inc 8/25/83 (Nw) fvf	
8/26/83	Motion of appellant to extend time to file brief to September 15th (m-24) acg	
9/7/83	ORDER granting appellant's motion to file brief by 9/15/83 - nfx (Nw) fvf	
9/15/83	Motion of appellant to extend time to file brief to September 19th (m-15) acg	
9/19/83	Motion of appellant to extend time to file brief to September 21st (m-19) acg COG 9/23/83 cmj	
9/23/83	Appellant's brief - cmj	
10/12/83	Motion of appellee to extend time to file brief to Nov. 23rd-GRT/cog	
11/10/83	Appellee's brief (m-10) gg list and appendix (m-20) sl NFX mlh	
1/5/84	Appellant's motion to present oral argument (m-3) cwc	
1/17/84	LETTER granting appellant's motion to present oral argument (RBH) cwc	
2/17/84	ARGUED before Judges Newman, Nebeker and Ferren.	12-1
5/24/84	OPINION per Chief Judge Theodore R. Newman, Jr. (p.988) JUDGMENT affirming judgment of conviction.	
6/15/84	MANDATE ISSUED. mj	

888

17
AM

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

13888

1983-ADS

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA — 13888

See 13810 ADS

TITLE OF CASE

GREGORY A. LUCAS,
a/k/a
GREGORY A PATTERON,
a/k/a
ROBERT A. THERATT,

Appellant,

v

UNITED STATES,

Appellee.

VIDE: 13810 + 82-704

No. Below: 87791-77

Court Below: CRIMINAL DIVISION

Judge Below: Alfred Burka

Date of Judgment: August 1, 1978

Notice of Appeal filed: September 7, 1978

ATTORNEYS FOR APPELLANT

APPOINTED BY THIS COURT:
~~John H. Spaulding, Esq.~~ ~~(NC)~~
~~910 17th St., N.W. (6)~~
~~466-5330~~

*Joel DuBoff, Esquire (9/24/80)
NUNC PRO TUNC 8/15/80
~~3913 Spruell Ct.~~
Kensington, MD. 20795
949-5123
121 Congressional Lane, St 500
Rockville, Md. 20852
~~881-3434~~ 415-2131

ATTORNEYS FOR APPELLEE

Charles F.C. Ruff (1/29/82)
John A. Terry "
Stanley S. Harris (2/25/83)
Michael W. Farrell "
*Robert H. Klonoff

DATE	ACCOUNT OF APPELLANT	RECEIVED	DISBURSED	REMARKS
	CJA			FELONY: Indecent Expo Sodomy

13883

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

13883

DATE	FILINGS—PROCEEDINGS	FILED
9/18/78	Preliminary record	
9/18/78	Order appointing John H. Spaulding, Esq. as counsel for appellant (HEK)	
10/26/78	Record on appeal	
12/21/78	ORDER consolidating with appeal No. 13810 (Nw)	
12/27/78	Supplemental record (246 pages of transcript) (n) pages 204-245 omitted (since vol	
2/7/79	Motion of appellant to vacate docketing of appeal transcript (m-6)	
5/18/79	Supplemental record #2 (Graham 65p) (n)	
6/27/79	Motion of Appellant to extend time to file brief to August 27th GRT/cog ag	
8/27/79	Motion of appellant to extend time to file brief to September 26th-GRT/cog ag	
9/26/79	Motion of appellant to extend time to Oct. 26th (m-26) mlh	
10/2/79	ORDER granting ext. of time to file appellant's brief to Oct. 26th - NFX (NEWMAN) mj	
10/23/79	Motion of appellant to extend time to file brief to Nov. 2nd (m-23) - pp	
10/30/79	GRANTED/cog mj	
11/2/79	Status report of appellant and motion to extend time to file brief to Dec. 2nd(m-2) mlh	
11/14/79	GRANTED/cog (fvf) EXT TO 1/21	
12/7/79	Motion of appellant to extend time to file motion to withdraw to Dec. 10th mlh	
12/12/79	Motion of appellant for transcription of full record-(m-11) mlh	
12/28/79	ORDER referring mot. to trial court for transc; the time for filing aplt's br. is ext. for 60 days. (Ky) fvf	
3/11/80	ORDER that counsel for appellant show cause by 3/31/80 why this consolidated cause should not be dismissed (NW)	
3/31/80	Response of appellant to show-cause order and to extend time to file brief to May 31st (m-31) mlh	
4/18/80	ORDER ext time for filing aplt's br. to and inc. 5/31/80. The OTSC shall remain in effect pending the filing of aplt's br. (Nw) fvf	
5/13/80	Supplemental record #3 (21p - Rust) sl	
6/2/80	Motion of appellant to extend time to file brief to Aug. 1st (m-30)ml	
6/19/80	GRANTED/cog (fvf)	
7/17/80	Supplemental record #4 (29 pages of transcript-Bowman) ag	
8/1/80	Motion of appellant to extend time to file motion for appointment of new counsel to August 15th (m-26) mlh	
10/31/80	ORDERED sua sponte that appellant's brief is extended to 11/24/80 (NW) - tag	
Reporter	Graham d [illegible] 10/3 No NOTES	
11/26/80	Motion of appellant to extend time to file brief to Dec. 19th(m-24)ml	
12/04/80	GRANTED/cog (fvf)	
12/24/80	Motion of appellant to extend time to file brief to Jan. 15th(m-22) mlh	
01/05/81	ORDER extending time for filing aplt's br. to and inc Jan. 16, 1981 NFX (Nw) fvf	
1/16/81	Motion of appellant to extend time to file brief or other pleading to Feb. 6th (m-14) mlh GRT/cog tag	
2/5/81	Motion of appellant's counsel to withdraw (m-5) ag	
2/19/81	LETTER to appellant re motion of counsel to w/draw (fvf)	
3/06/81	Appellant's response to motion of counsel to w/draw (m-2) fvf	

(See Page 2)

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13838

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

ADS - 1983

	13838	(Page 2)

DATE	FILINGS—PROCEEDINGS	FILED
3/19/81	ORDER remanding record to the trial judge with directions to take approp. steps to have transcript promptly prepared by court rptr. (Myrtle Graham) to be transmitted to this Court as supplemental record (Nw) sl	
4/17/81	ORDER denying the motion of counsel to withdraw w/o prejudice to the filing of an appropriate Anders motion. The time for filing a brief or some appropriate motion is extended to May 22, 1981. (Nw) mkw	
6/15/81	Letter to counsel for aplnt re transcript. mkw	
10/20/81	LETTER to Ms. Kenny Off. Vice President regarding status of appeal;referred to Clerk of Super. Ct. HK (tag)	
01/19/82	ORDER directing appellee to show cause why appeal should not be remanded to Super. Ct. for new trial by Jan. 29, 1982 (NW) tag	
1/11/82	Supplemental record #5(order) mlh	
1/29/82	Answer of appellee to OTSC (m-29) mlh	
02/24/82	ORDER remanding the record to the Super. Ct. w/instructions to complete the record or entertain a motion for new trial (NW) tag	
2/23/83	ORDER dirg counsel, on or bef 3/4/83, to file a stmt re status of remand proceedings in trial court (Nw) fvf	
2/25/83	Motion of appellee in #82-390 to consolidate with this appeal and #13810 (m-25) ag	
5/17/83	Note: Judgment in 82-390 affirming; dismissing as moot the motion to consolidate 13810 and 13888 with 82-390 - cmj	
06/01/83	ORDER consolidating appeal no 82-704 with nos. 13810 and 13888 and denying motion of appellant in 82-704 in all other respects; brief of appellant in these consolidated appeals shall be due by July 11, 1983 (FePy) cwc	
7/8/83	Motion of appellant to extend time to file brief to August 25th (m-8) acg	
7/13/83	ORDER extg time for filing aplt's br to and inc 8/25/83 (Nw) fvf	
8/26/83	Motion of appellant to extend time to file brief to September 15th (m-24) acg	
9/7/83	ORDER granting appellant's motion to file brief by 9/15/83 - nfx (Nw) fvf	
9/15/83	Motion of appellant to extend time to file brief to September 19th (m-15) acg	
9/19/83	Motion of appellant to extend time to file brief to September 21st (m-19) acg COG 9/23/83 cmj	
9/23/83	Appellant's brief - cmj	
10/12/83	Motion of appellee to extend time to file brief to Nov. 23rd--GRT/cog	
11/10/83	Appellee's brief (m-10) gg list and appendix (m-20) sl NFX mlh	12/1
1/5/84	Motion of Appellant to present oral argument(m-3)rjg	
1/17/84	LETTER granting appellant's motion to present oral argument (RBH) cwc	
2/17/84	ARGUED before Judges Newman, Nebeker and Ferren.	
5/24/84	OPINION per Chief Judge Theodore R. Newman, Jr. (p.988) JUDGMENT affirming judgment of conviction.	
6/15/84	MANDATE ISSUED. mj	

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GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

Ado - 1983

APPEAL FROM THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA | 82 704

Sp # 80-677, 82-390

TITLE OF CASE	ATTORNEYS FOR APPELLANT
GREGORY A. LUCAS, Appellant, v. HAROLD G. MILLER, Warden, U.S. Penitentiary Marion, Illinois, Appellee.	APPOINTED BY THIS COURT: (07/01/82) *M. Elizabeth Kent, Esq. 1730 Rhode Island Avenue, N.W. Suite 910 (36) 457-0705
VIDE - 13810 + 13888	**ATTORNEYS FOR APPELLEE**
No. Below: SP0035-82 Court Below: CRIMINAL DIVISION Judge Below: Harriett R. Taylor (non-jury) Date of order April 14, 1982 Notice of Appeal filed: April 14, 1982	Michael W. Farrell *Robert H. Klonoff

DATE	ACCOUNT OF APPELLANT	RECEIVED		DISBURSED		REMARKS
	FORMA PAUPERIS					

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GENERAL DOCKET

82 704

DISTRICT OF COLUMBIA COURT OF APPEALS

ADS-1983

82 704

DATE	FILINGS—PROCEEDINGS	FILED
7/16/82	Record on appeal (n) sl	
8/6 /82	Motion of appellant to extend time to file brief to Oct. 25th-GRT/cog	
10/25/82	Motion of appellant for stay or, in the alternative, for consolidation of #13888 or for Summary Reversal (m-25) ag NFX	mlh
06/01/83	ORDER consolidating appeal no. 82-704 with nos. 13810 and 13888 and denying motion of appellant in all other respects; brief of appellant in these consolidated appeals shall be due by July 11, 1983 (FePy) cwc	
7/8/83	Motion of appellant to extend time to file brief to August 25th (m-8) acg	
7/13/83	ORDER extg time for filing aplt's br to and inc 8/25/83. (nw) fvf	
8/26/83	Motion of appellant in #13888 & #13810 to extend time to file brief to September 15th (m-24) acg	
9/7/83	ORDER granting appellant's motion to file brief by 9/15/83 - nfx (Nw) fvf	
9/15/83	Motion of appellant to extend time to file brief to September 19th (m-15) acg	
9/19/83	Motion of appellant to extend time to file brief to September 21st (m-19) acg COG 9/23/83 cmj	
9/23/83	Appellant's brief - cmj	
10/12/83	Motion of appellee to extend time to file brief to Nov. 23rd-GRT/cog	
11/10/83	Appellee's brief (m-10) gg list and appendix (m-20) sl NFX	mlh
1/5/84	Motion of Appellant to present oral argument(m-3)rjg	
1/17/84	LETTER granting appellant's motion to present oral argument (RBH) cwc	
2/17/84	ARGUED before Judges Newman, Nebeker and Ferren.	
5/24/84	OPINION per Chief Judge Theodore R. Newman, Jr. (p.988) JUDGMENT affirming judgment of conviction.	
6/15/84	MANDATE ISSUED. mj	

FIVE OLDEST CASES

MEMORANDUM

July 9, 1985

TO: Larry Polansky, Esq.

FROM: Alan I. Herman

RE: Five Oldest Cases

Attached are the oldest five cases pending before the District of Columbia Court of Appeals. For each the full docket is attached as well as a summary of significant dates. Where the docket or summary indicates "Suppl Record," these are portions of transcript as they are received from the Appeals Coordinator's Office (which receives them from the court reporters).

The status of each is as follows:

79-1006 - The appeal is now being held in abeyance pending disposition of a motion to vacate sentence in the Superior Court.

80-166 - Petitions for rehearing/rehearing en banc are awaiting the votes of the judges of this court.

80-811 - The opinion of this court on 9/30/83 remanded the record (while retaining jurisdiction) to the Superior Court; proceedings in that court have not yet been completed.

80-955 - Petitions for rehearing/rehearing en banc are awaiting the votes of the judges of this court.

81-332 - The appeal is now awaiting decision/opinion of the judges of this court.

79-1006 - Hockman v. US

Felony - 9/21/79 judgment of Judge Doyle

9/28/79	Notice of Appeal
11/15/79	Record - 133 pages of transcript
2/6/80	Suppl Record - 47 pages
10/8/80	Suppl Record - 303 pages
4/30/81	Appellant's Brief
8/10/81	Suppl Record - 26 pages
10/26/81	Suppl Record - 101 pages
11/2/81	Appellee's Brief

[2/3/82 - Appellant's counsel withdrew; new counsel appointed]

4/5/82	Suppl Record - 9 pages
4/6/82	Suppl Record - 7 pages
4/7/82	Suppl Record - 12 pages
5/3/82	Suppl Record - 172 pages
5/12/82	Suppl Record - 12 pages
5/23/83	Suppl Record - 404 pages

[2/16/84 - motion to vacate sentence filed in Superior Court; appeal now held in abeyance pending its disposition]

If he is successful in the trial court, it will probably moot this appeal. If he is unsuccessful, he may file another notice of appeal; and we will consolidate the new case with this one. New appellant's counsel will be given time to file a supplemental brief (4/30/81 appellant's brief was filed by previous counsel).

'06 79 1006

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

ADS

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA — 79 1006

TITLE OF CASE

MICHAEL R. HOCKMAN,
Appellant,

v

UNITED STATES,
Appellee.

ATTORNEYS FOR APPELLANT

APPOINTED BY THIS COURT: (10/31/79)
~~D. Gregory Lewis, Esq. (NG)~~
~~1420 N Street, N.W.~~
~~Suite 10 (05) 332-1010~~
William Mertens (2/3/82)
Susan L. Schneider (9/12/83)

ATTORNEYS FOR APPELLEE

Charles F. C. Ruff (6/8/81)
John A. Terry "
Pamela B. Stuart
Michael W. Farrell (11/2/81)

No. Below: 102591-77
Court Below: CRIMINAL DIVISION
Judge Below: John F. Doyle (Jury)
Date of Judgment: September 21, 1979
Notice of Appeal filed: September 28, 1979

DATE	ACCOUNT OF APPELLANT	RECEIVED	DISBURSED	REMARKS
	CJA			Felony: Murder II CDW, CPWOL pwp

79 1006 79

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

ADS

	79 1006	
DATE	FILINGS—PROCEEDINGS	FILED
Reporter	Palmer [illegible] 3/24 4/17 [illegible] 8/5 Curley 150 p. [illegible] 11/15 ✓ Mollichelli 30 p. [illegible] 2/1/80 ✓	
11/15/79	Record on appeal (133 pages of transcript-Curley) (RTC) - pp	
2/6/80	Supplemental record (47 pages of transcript-Mollichelli) ag	
9/18/80	Motion of appellant to compel production of transcript (m22) - pp [illegible]	
9/25/80	ORDER referring motion to trial judge to have transcript prepared (Nw) fvf	
10/8/80	Supplemental record #2 (303 pages of transcript-Palmer) (n) - pp	
11/14/80	Motion of appellant to extend time to file brief to November 26th-GRT/cog ag	
12/9/80	Motion of appellant to extend time to file brief to December 19th-GRT/cog- pp	
12/19/80	Motion of appellant to extend time to file brief to Jan 12th-GRT/cog mh	
4/13/81	OTSC by 4/20/81 re failure to timely file appellant's brief. (Nw) mkw [illegible]	
4/17/81	OTSC by 4/30/81 re failure to timely file appellant's brief. (Nw) mkw (4/13/81 OTSC returned)	
4/30/81	Appellant's brief (m-30) - pp	
6/8/81	Motion of appellee to extend time to file brief to July 8th (m-8) ag GRANTED/cog 6/23/81 mkw	
7/7/81	Motion of appellee to extend time to file brief to August 12th (m-7) - pp GRT/cog	
8/10/81	Supplemental record #3 (26 pages of transcript-Curley) ag	
8/10/81	Motion of appellee to extend time to file brief to 14 days after receipt of the transcript (m-10) ag	
8/20/81	ORDER granting appellee's motion to file brief 14 days after filing of additional reporter's transcript; CR James Palmer by Monday, 8/31/81, to file statement re RT (NW) cmj	
Reporter	Palmer 110 p. [illegible] 7/1	
10/26/81	Supplemental record #4 (101 pg. of transcript-Palmer) (n) - pp	
11/2/81	Appellee's brief (m-2) ag (List & Appendix)	
12/8/81	Motion of court-appointed counsel to withdraw as counsel sl	
02/03/82	ORDER vacating the appointment of Mr. Lewis as appellant counsel and appointing William Mertens, Esq., (PDS);Mr. Mertens to file a statement indicating his or not he intends to adopt the brief filed by former counsel by Mar. 15 (KY) tag	
3/12/82	Motion of appellant to extend time to file brief to 40 days after receipt of addt'l transcripts (m-12) sl	
Reporters	Holts 10 p. d. 5/9 ✓ Henry 150 p. d. 4/26 Rust 12 p. d. 3/31 ✓	
03/25/82	ORDER extending the time to file appellant's brief to 40 days after the complete reporter's transcript has been filed with this court (N) tag	
4/5/82	Supplemental record #5 (9 pages - Rust & 13 pages - Houghton) sl	
4/6/82	Supplemental record #6 (7 pages - Houghton) sl	
4/7/82	Supplemental record #7 (12 pages - Holts) sl	
5-3-82	Supplemental record #8 (172 pages of transcript - Henry) (n) ayk	
5/12/82	Supplemental record #9 (12 pages - Gleason) sl	
6/21/82	Motion of appellant to extend time to file brief to August 23rd (m-21) sl no opp	
7/1/82	ORDER extending time for filing appellant's br to and inc August 23rd. NFX (Nw) fvf	
Reporter	Palmer 30 p. d. [illegible] 3/25	
9/1/82	Motion of appellant to extend time to file brief 40 days after filing of the transcript (m-1) ag	
9/15/82	ORDER granting motion (Ky) fvf [illegible] SEE SECOND PAGE	

006 79 1006

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

SECOND PAGE

79 1006

DATE	FILINGS—PROCEEDINGS	FILED
5/23/83	Supplemental record #10 (404 pages trans-PALMER) (n) mlh	
9/12/83	Motion of appellant to extend time to file brief to Nov. 10th (m-12) sl	
10/7/83	ORDER granting appellant's motion to extend time to file brief to 11/10/83. NFX! (Nw) cwc	
11/10/83	Motion of appellant to stay briefing schedule (m-10) mlh	
12/2/83	ORDER granting motion to stay; appellant's counsel in 10 days to file appropriate motion in Superior Court and to serve copy on this court; counsel to advise immediately upon trial judge's ruling (Kn) cmj	
12/9/83	Motion of appellant to extend time to file motion to vacate sentence, to set aside judgment, and for a new trial to Jan. 16th (m-9) sl	
1/6/84	ORDER granting appellant's motion; counsel to file motion in Superior Court within 30 days and to serve copy on this court (Nw) cmj	
2/6/84	Motion of appellant to extend time to file motion to vacate sentence, set aside judgement and for a new trial to 2/10/84 (m-6) gg	
2/16/84	Motion of appellant for leave to file motion to vacate sentence, etc (m-16) mlh COG 2/23/84 cmj (Received: copy of motion filed in Superior Court)	
5/16/84	Motion of appellant to remand of case to trial court (m-16) gg	
6/6/84	ORDER denying motion for remand without prejudice to its renewal upon the trial judge's indicating an intention to grant the relief sought. (Nw) acg	
10/5/84	ORDER dirg aplt in 10 days to file statement re status of pending motion before the trial judge (Nw) acg	
10/16/84	Statement of appellant ~~in~~ response to 10/5/84 order re status of pending motion before the trial judge. (m-16) sed	
2/15/85	ORDER that counsel in 10 days to file statement re status of motion for new trial filed in the Superior Court (PY) sl	2-25
2/20/85	Statement of appellant's counsel re: Status of motion for new trial (m-20) gg	STATE
6/14/85	ORDER that counsel in 10 days to file statement with Clerk re status of motion for new trial filed in Supr. Ct. (PY) sl	

6-24 state

J-8122-74

80-166 - Derrington v. US

Felony - 1/31/80 judgment of Judge Bacon

2/5/80	Notice of Appeal
3/20/80	Record
5/22/80	Suppl Records - 342 and 291 pages of transcript
11/4/80	Suppl Record - 224 pages

[11/18/80 - consolidated with 80-458, Grayson v. US, which has a 4/3/80 judgment of Judge Bacon with a 4/7/80 notice of appeal]

2/18/81	Suppl Record - 224 pages
3/4/81	Suppl Record - 49 pages

[3/30/81 - motion for new trial filed in Superior Court; denied]

[10/27/82 - consolidated with 82-1155, Derrington v. US, which has a 8/19/82 order of Judge Bacon with a 8/25/82 notice of appeal]

5/4/83	Appellant's Brief in 80-458
5/17/83	Appellant's Brief in 80-166 and 82-1155
12/19/83	Appellee's Brief
12/29/83	Suppl Record
3/12/84	Suppl Record - 5 pages
3/27/84	Argued before Judges Nebeker, Pryor, Rogers
2/21/85	Opinion affirming in part, vacating in part, and remanding case
3/20/85	Appellants' petitions for rehearing/rehearing en banc

Petitions pending

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80 166

ADS - 1983

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

VIDE 80-458, 82-1155 + ~~83~~-29

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA — 80 166

[illegible]

82-1155 (See 80-458)

TITLE OF CASE	ATTORNEYS FOR APPELLANT
ANDRE C. DERRINGTON, Appellant, v UNITED STATES, Appellee.	APPOINTED BY THIS COURT: (3/14/80) ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ ~~[illegible]~~ (12/22/80) Silas J. Wasserstrom, Esq. PDS 628-1200 Elizabeth J. Branda (1/29/81) Randy I. Bellows (4/1/83)

	ATTORNEYS FOR APPELLEE
Vide # 80-458, 82-1155 + 83-29 lead No. Below: 1263-79 Court Below: CRIMINAL DIVISION Judge Below: Sylvia Bacon jury Date of Judgment: January 31, 1980 Notice of Appeal filed: February 5, 1980	Michael W. Farrell Craig N. Moore

DATE	ACCOUNT OF APPELLANT	RECEIVED		DISBURSED		REMARKS
	CJA					felony: Murder I w/a Armed Rob. PP

80 166

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

80 166	Large Record in Large Record Cabinet #4 2nd Drawer	
DATE	FILINGS—PROCEEDINGS	FILED
Reporter	Irving 340 pp - due ✓ 8-18-80 ✓ (in 80-458 for [illegible])	
	Stucky 290 pp due 4/15 ✓	
	Pavlish 27_ pp due [illegible] 4/9 ✓	
3/20/80	Record on Appeal (RTC) ag	
5/22/80	Supplemental Record (342 pages of transcript-Pavlish) - pp	
5/22/80	Supplemental Record (291 pages of transcript-Stucky) - pp (RTC)	
11/4/80	Supplemental record (224 pages of transcript-Irving) (n) - pp	
11/18/80	ORDER consolidating 80-166 & 80-458 for all purposes. (Nw) fvf	
12/8/80	Motion of appointed counsel for leave to withdraw (m-8) - pp	
12/12/80	Motion of appellant to extend time to file brief to Jan 23rd-GRT/cog	
12/22/80	ORDER vacating appointment of Michael B. Trister, Esq and apptg. Silas J. Wasserstrom, Esq. to represent appellant. (Nw) fvf	
1/29/81	Motion of appellant to extend time to file brief to March 30th-GRT/co	
Reporters	Sanborn 20 pp d. 3/6 ✓ Ronan ✓ mlh	
2/18/81	Supplemental (51 pages trans. Ronan) tag	
3/4/81	Supplemental record (49 pg. of transcript-Sanborn) - pp	
3/30/81	Motion of appellant to extend time to file brief pending trial court's ruling on appellant's motion for new trial (m-30) fvf	
4/27/81	ORDER granting appellant's motion to hold appeal in abeyance pending further order of this Court. Counsel to keep Court informed of status of motion in the trial court. (Nw) mkw	
7/29/82	ORDER directing counsel for appellant to file a statement on or bef 8/13/82 re status of pending motion in trial court (Ky) fvf	
8-12-82	Statement of appellant concerning pending motion in trial court (M-12) ayk	
8/18/82	Statement of appellant regarding pending motion in trial court (m-18) ag	
8/23/82	ORDER directing that appellant's brief be filed with the Clerk on or before 10/1/82 (Nw) fvf	
10-1-82	Motion of appellant to consolidate appeal #82-1155 with this case(m-1)mlh	
10/27/82	ORDER granting motion to consolidate 80-166, 80-458 and 82-1155; appellant Derrington's brief due 40 days after filing of complete record (NW) cmj	
10/1/82	Motion of appellant to extend time to file brief to December 3rd (m-1) ag	
11/8/82	GRANTED/cog ag NO FURTHER EXTENSIONS	
2/23/83	ORDER dirg that aplt's br in nos. 80-166 & 82-1155 be filed on or bef 4/4/83; FURTH ORD that counsel in no. 80-458 shall file a stmt re status of pending motion for new trial on or bef 3/7/83. (Nw) fvf	
4/1/83	Motion of appellant to extend time to file brief to June 4th (p-1) ag	
4/06/83	ORDER extg time for filing aplt's br to and inc 5/4/83; FURTH ORD that aple's brief shall be filed w/in 30 days from date on which aplt's brief is filed. NFX (Nw) fvf	
05/02/83	ORDER deny the motion to consolidate nos. 80-458 & 80-955; vide nos. 83-29 with 80-458; vide nos. 83-30 with 80-955; Clerk to schedule the two sets of consolidated cases for argument before the same division at the same sitting (NW) tag	
05/04/83	Appellant's brief in nos. 80-955 & 80-458 (m-4/1) tag	
5/10/83	Motion of appellant for leave to file brief (m-10) ag GRANTED/cog (fvf) 5/17/83	
5/17/83	Appellant's brief (m-10) fvf	
10/6/83	ORDER that counsel for Appellant Grayson within 15 days advise the clerk in writing of intention to dismiss the appeal in No. 83-29 (Nw) cmj	
10/20/83	Note: Order dismissing 83-29 (Nw)	
11/1/83	ORDER that appellee's brief be filed within 30 days (Nw) cmj	
12/1/83	Motion of appellee for leave to file brief in excess of page limit(m-1) mlh GRT/NW 12/19/83 cmj	

2-8122-14

SEE SECOND PAGE

80 166

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GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

SECOND PAGE

80 166

DATE	FILINGS—PROCEEDINGS	FILED
12/19/83	Appellee's brief - cmj list & appendix mlh	
3/12/84	Supplemental record #1 (5 pgs - BOSTON) gg	
12/29/83	Supplemental record #2 (RTC) gg	
3/20/84	Motion of Appellant for leave to file reply brief (m-20) ds Rec'd RBA	
3/26/84	Motion of Appellant Grayson to postpone argument (p-26) cmj	
3/26/84	ORDER denying motion to postpone argument (NbPyRo) cmj	
3/27/84	ARGUED before Judges Nebeker, Pryor and Rogers.	
5/14/84	ORDER granting appellant's motion for leave to file reply brief; Clerk to file lodged reply brief (NbPyRo) cmj	
5/14/84	Appellant's reply brief - cmj	
2/21/85	OPINION per Associate Judge Judith W. Rogers. (p.338) JUDGMENT affirming in part & vacating in part judgments on appeal...remanding cause w/instructions.	
3/6/85	Motion of appellant to extend time to file petition for rehearing or suggestion for rehearing en Banc to March 21st (m-6) mlh GRANTED/Py 3/12/85 acg	
3/20/85	Appellant's petition for rehearing/rehearing en banc (m-20) gg	
4/2/85	ORDER that appellee in 10 days to file response (ten copies) (PY) sl	
4/2/85	Appellant's motion for extension of time to file Petition for rehearing/rehearing en banc until April 8, 1985(p-2)rjg	
4/10/85	Motion of appellant in 80-458 & 80-955 for leave to file petition for rehearing/rehearing en banc (p-10) gg	
4/10/85	Motion of appellee to extend time to file response to petition for rehearing/rehearing en banc to 4/26/85 (m-10) gg GRANTED/Py 4/19/85	
4/26/85	Appellee's opposition to petition for rehearing/rehearing en banc (m-26) gg	

80-811 - Staton v. US

Felony - 6/27/80 judgment of Judge Bacon

7/2/80	Notice of Appeal
8/29/80	Record
11/18/80	Suppl Record - 427 pages of transcript
10/22/82	Suppl Record - 6 pages
11/1/82	Suppl Record - 14 pages
11/9/82	Suppl Records - 5 pages, 4 pages
11/12/82	Suppl Record - 139 pages
11/26/82	Suppl Records - 4 pages, 4 pages
1/21/83	Suppl Record
2/10/83	Appellant's Brief
3/2/83	Suppl Records - 5 pages
3/21/83	Appellee's Brief
5/5/83	Argued before Judges Ferren, Belson, Kelly
9/30/83	Opinion remanding record

Remand proceedings still pending.

811 80 811

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

ADS

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA	80 811

466 A.2d 1245 (12-9-83)

TITLE OF CASE

THEODORE STATON,
Appellant,

v

UNITED STATES,
Appellee.

No. Below: F 3019-78

Court Below: CRIMINAL DIVISION

Judge Below: Sylvia Bacon jury

Date of Judgment: June 27, 1980 jmt

Notice of Appeal filed: July 2, 1980

ATTORNEYS FOR APPELLANT

APPOINTED BY THIS COURT: (8/15/80)
~~Edward N. Reiner, Esq. (NC)~~
~~1100 - 17th St., N.W.~~
~~Suite 1000 (36)~~
~~223-6915~~
Steven H. Goldblatt, Esq.
605 G St., N.W. 4th Floor (01)
Georgetown University Law Center
624-8296

Thomas L. Fairfield, LS#3437

ATTORNEYS FOR APPELLEE

Stanley S. Harris
Michael W. Farrell
*John E. Stevens
Judith Hetherton (3/21/83)
William J. O'Malley, Jr.

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
	CJA			Felony: Armed Rape and Armed Rob. PP

80 811

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

	80 811	
DATE	FILINGS—PROCEEDINGS	FILED
Reporter	Pavlish 427 p.d. [illegible] 4/4 11/7	
8/29/80	Record on Appeal (RTC) ag	
11/18/80	Supplemental record (427 pgs - Pavlish) (n) fvf	
12/23/80	Motion of appellant to extend time to file brief to 40 days after filing of transcript-GRT/cog mlh	
8/26/82	Motion of court-appointed counsel to withdraw as counsel (m-20) sl	
9/20/82	ORDER vacating the appointment of Edward Reiner, Esq., & appointing Steven M. Goldblatt, Esq.; appellant's brief due Nov. 1, 1982 (KY) tag	
10/22/82	Supplemental record #2 (6 pages of transcript-Holland) ag	
10/19/82	Motion of appellant to extend time to file brief 40 days after filing of the transcript (p-19) ag	
10/27/82	GRANTED/cog ag	
11/1/82	Supplemental record #3 (14 pages of transcript-Pavlish) (RTC) ag	
Reporter	Sargent 150 pd. 12/6 ✓	
11-9-82	Supplemental record #4 (5 pages of transcript-Henry) (RTC) ayk	
11-9-82	Supplemental record #5 (4 pages of transcript-Palmer) (RTC) ayk	
11-12-82	Supplemental record #6 (139 pages of transcript-Sargent) (RTC) ayk	
11/26/82	Supplemental record #7 (4 pgs trans--HOUGHTON) mlh	
11/26/82	Supplemental record #8(4 pgs trans--SANBORN) mlh (n)	
12/30/82	Motion of appellant to extend time to file brief to February 10th (m-30) ag	
1/4/83	GRANTED/cog ag	
Reporter	Bradley 25 pd. 1/20	
1-21-83	Supplemental record #9 (Stipulation & Letter) (RTC) ayk	
2/10/83	Appellant's brief (p-10) sl	✓
3/2/83	Supplemental record #10 (5 pages of transcript-Bradley) (RTC) ag	
3/2/83	Supplemental record #11 (exhibits attached, etc.) ag	
3/2/83	Supplemental record #12 (Suspect Statement) ag	
3/11/83	Motion of appellee to extend time to file brief to March 21st (m-11) GRT/cog sl	
3/21/83	Appellee's brief (m-21) ag list and appendix (m-15) sl	
4-5-83	Appellant's reply brief (M-5) ayk	
5/3/83	Consent of supervising attorney and appellant to apperance of Thomas L. Fairfield for appellant (LS #3437) mlh	
5/5/83	ARGUED before Judges Ferren, Belson, and Kelly.	
9/30/83	OPINION per Associate Judge James A. Belson. (p.1890) ORDER remanding record to trial court for further proceedings.	
10/14/83	Petition of appellant for rehearing and rehearing en banc (p-14) sl	
12/7/83	ORDER denying appellant's petition for rehearing/rehearing en banc (NwKnNbMkFePy BeTeRo; Judge Terry recused) cmj	
12/12/83	Motion of appellant to stay issuance of mandate (p-12) sl	/
1/5/84	ORDER denying appellant's motion to stay remand of record (FeBe) cmj	
03/07/84	ORDER directing parties w/i 10 days file statement with Clerk of this court regarding status of remand proceedings. (NW)sed	
3/16/84	Statement of appellant per order of 3/7/84 (m-15) mlh	
6/12/84	ORDER directing parties in 10 days file statement w/Clerk re trial court findings in remand proceedings. (NW)sed	
6/22/84	Statement of appellant of appellant per order of 6/12/84 (m-20) mlh	/
6/25/84	Motion of appellee for leave to file statement (m-25) mlh COG 7/3/84	
7/3/84	Statement of appellee - cmj	
11/29/84	ORDER directing counsel in 10 days to file statement w/Clerk re remand proceedings. (PY)sed	
12/7/84	Answer of appellant to order 11/29/84 mlh	
3/6/85	ORDER directing counsel in 10 days to file statement regarding the status of remand proceedings(PY) sl	
3/8/85	Statement of appellant's counsel re: status of case (m-8) gg	
3/12/85	Statement of appellant's counsel regarding status on remand (m-11)gg	
6/14/85	ORDER that counsel in 10 days to file statement with Clerk re status of remand proceedings (PY) sl	6-24 M.

80-955 - Grayson v. US

Felony - 8/8/80 judgment of Judge Bacon

8/18/80 Notice of Appeal

10/24/80 Record

1/7/81 Suppl Record - 66 pages

5/11/81 Suppl Record - 578 pages

9/3/81 Appellant's Brief in 80-1168

[9/30/81 - consolidated with 80-1168, Oates v. US, which has a 9/9/80 judgment of Judge Bacon with a 9/18/80 notice of appeal]

[4/6/82 - motion for new trial (Grayson) filed in Superior Court; denied.]

[5/2/83 - consolidated with 83-30, Grayson v. US, which has a 1/6/83 order of Judge Bacon and a 1/18/83 notice of appeal; subsequently dismissed on 10/20/83]

5/4/83 Appellant's Brief in 80-955 and 83-30

1/20/84 Appellee's Brief

1/30/84 Suppl Record - 137 pages

3/27/84 Argued before Judges Nebeker, Pryor, Rogers

2/25/85 Memorandum Opinion and Judgment affirming

4/19/85 Appellants' petitions for rehearing/rehearing en banc

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Petitions pending

5 NO. 455

ADS-1983

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

83-30
VIDE 80-1168

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA | NO. 455

co-Def: Sherman Oates, - Ronald D. Thompson

TITLE OF CASE	ATTORNEYS FOR APPELLANT
STANLEY M. GRAYSON, JR., Appellant, v UNITED STATES, Appellee.	APPOINTED BY THIS COURT: 8/26/80 Gregory B. MaCaulay, Esq (TC) ~~37 Canterbury Square~~ ~~#301~~ Alexandr~~ia, VA 22301~~ 628-0~~200~~ ~~1101 14th Street,~~ N.W. ~~Suite 900 (05)~~ c/o Morton 5005 Fi[illegible] St #10 Alexandria VA 22311
VIDE 80-1168 & ~~83-30~~ dead	**ATTORNEYS FOR APPELLEE**
No. Below: F-2232-79 Court Below: CRIMINAL DIVISION (JURY) Judge Below: Sylvia Bacon Date of Judgment: August 8, 1980 Notice of Appeal filed: August 18, 1980	John A. Terry, Esquire B. Shipley Thomas *

DATE	ACCOUNT OF APPELLANT	Received	Disbursed	REMARKS
	CJA			FELONY: Mur II;PPW mlh

80-955

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

80-955	VIDE 80-1168	
DATE	FILINGS—PROCEEDINGS	Fees
	PAVLISH (see 80-1168 for transcript)	
10/24/80	Record on appeal (RTC) mlh	
9/8/81	Motion of appellant to extend time to file brief to October 19th-GRT/cog - pp	
09/30/81	ORDER consolidating 80-955 and 80-1168 (NW) tag	
10/19/81	Motion of appellant to extend time to file brief to Nov. 30th (m-19) - pp	
10/28/81	ORDER granting appellant's motion to extend time to file brief to Nov. 30th. NO FURTHER EXTENSIONS. (Nw) mkw	
4/6/82	Motion of appellant to hold appeal in abeyance (m-6) ag [illegible]	
04/14/82	ORDER granting the motion to hold appeal in abeyance and directing that appellant's brief be filed by June 14, 1982 (NW) tag	
4/29/82	Motion of appellant for reconsideration on order granting motion to hold appeal in abeyance (m-28) ag	
06/08/82	ORDER staying proceedings until decision on motion for new trial pending in trial court; appellant's brief to be filed 30 days from the date of the decision; counsel to advise this court after receipt of the decision (KY) tag	
2/23/83	ORDER dirg counsel for aplt, on or bef 3/3/83, to file a stmt re status of pendg. mot in trial court (Nw) fvf	
3/3/83	Motion of appellant to consolidate this appeal with #80-458 (m-3) ag	
3/3/83	Statement of appellant re status of motion for new trial ag	
4/4/83	Motion of appellant for leave to file brief in excess of fifty pages (p-4) ag	
05/02/83	ORDER deny the motion to consolidate nos. 80-458 & 80-955; vide nos. 83-29 with 80-458; vide nos. 83-30 with 80-955; Clerk to schedule the two sets of consolidated appeals for argument before the same division at the same sitting (NW) tag	
05/04/83	GRT/cog motion for leave to file brief in excess of 50 pgs. (tag)	
05/04/83	Appellant's brief (m-4/1) tag	
6/23/83	ORDER that counsel for appellant within 10 days file statement of reasons for failing to timely file appellant's brief in 83-30 (NW) cmj	
10/6/83	ORDER that counsel for Appellant Grayson within 15 days advise the Clerk in writing of his intention to dismiss the appeal in No. 83-30 (Nw) cmj	
10/20/83	Note: Order dismissing 83-30 (Nw)	
11/1/83	ORDER that appellee's brief be filed within 30 days (Nw) cmj	
11/29/83	Motion of appellee to extend time to file brief to Jan. 2nd (m-29) mlh	
12/21/83	ORDER granting appellee's motion to extend time to file brief to and including 1/2/84;NFX! (Nw) acg	
12/29/83	Motion of appellee to extend time to file brief to 1/20/84 (m-29) gg	
1/6/84	ORDER granting appellee's motion to extend time to file brief to 1/20/84; failure to comply will result in calendaring on appellant's brief and record only (Nw)cwc	
1/20/84	Motion of appellee to supplement record on appeal (m-20) sl COG/1-31 cwc	
1/20/84	Appellee's brief (m-20) sl list & appendix mlh	
1/30/84	Supplemental record #3 (137 pgs rt-BOWMAN) mlh	
3/26/84	Motion of Appellant Grayson to postpone argument (p-26) cmj	
3/26/84	ORDER denying motion to postpone argument (NbPyRo) cmj	
3/27/84	ARGUED before Judges Nebeker, Pryor and Rogers.	
2/25/85	MOJ affirming judgment on appeal. (Nb Py Rg) (no printed opinion)	
3/18/85	MANDATE ISSUED. mj	
4/2/85	Motion of appellant to recall mandate (m-2) mlh	
4/2/85	Motion of appellant to extend time to file petition for rehearing/rehearing en banc	
4/10/85	Motion of appellant for leave to file petition for rehearing/rehearing en banc (p-10)	
4/19/85	GRANTED/Py acg	99
4/19/85	Appellant's petition for rehearing and rehearing en banc	

81-332 - Epperson v. US

Misdemeanor - 2/19/81 judgment of Judge Smith

2/23/81	Notice of Appeal
5/1/81	Record
9/23/81	Suppl Record - 211 pages of transcript

[1/12/83 - appellant's counsel withdrew; new counsel appointed]

3/14/83	Appellant's Brief
5/25/83	Appellee's Brief
9/1/83	Submitted before Judges Mack, Ferren, Gallagher
2/2/84	Opinion reversing
4/25/84	Appellee's petition for rehearing
5/30/84	Order granting rehearing
6/20/84	Argued before Judges Mack, Ferren, Gallagher

Pending decision

. 332

.20 PM

81 332

ADS

GENERAL DOCKET
DISTRICT OF COLUMBIA COURT OF APPEALS

APPEAL FROM SUPERIOR COURT OF THE DISTRICT OF COLUMBIA — 81 332

TITLE OF CASE

ROBERT L. EPPERSON,
Appellant,

v

UNITED STATES,
Appellee.

ATTORNEYS FOR APPELLANT

APPOINTED BY THIS COURT: (04/30/81)
~~Ramona Powell, Esquire~~
~~818 18th Street, N.W.~~
~~Suite 500 (06) 293-2520~~
Edward N. Leavy, Esq. (1/12/83)
~~3053 Porter St, N.W. 20008~~
~~695-3421~~

1711 Mass. Ave., N. W., #701 (36)
(202) 328-3165

ATTORNEYS FOR APPELLEE

Michael W. Farrell
Stanley S. Harris (4/22/83)
*Regina C. McGranery "
*Judith [illegible] Esq.

No. Below: M-9867-80
Court Below: CRIMINAL DIVISION
Judge Below: Donald S. Smith jury
Date of Judgment: February 19, 1981
Notice of Appeal filed: February 23, 1981

DATE	ACCOUNT OF APPELLANT	Received		Disbursed		REMARKS
	CJA					Misd: Larceny after Trust PP

81 332

GENERAL DOCKET

DISTRICT OF COLUMBIA COURT OF APPEALS

81 332

DATE	FILINGS–PROCEEDINGS	FILED
5/1/81	Record on Appeal (n) ag	
6/3/81	Motion of applt to extend time to file brief to 40 days after receipt of trans. -GRT/cog - pp	
Reporter	Finnerin [illegible]	
9/23/81	Supplemental record #1 (211 pages of transcript-Finnerin) (n) ag	
10/23/81	Motion of appellant to extend time to file brief to Dec. 14th-GRT/cog mlh	
12/23/81	Motion of appellant to extend time to file brief to Jan. 22nd-GRT/cog - pp	
1/22/82	Motion of counsel for appellant for leave to withdraw as counsel sl	
2/4/82	Clerk's letter to appellant re filing response to motion of cac to withdraw as counsel; response due by April 5, 1982. mkw	
10/19/82	Motion of appellant's counsel for leave to withdraw (m-15) ag	
1/12/83	ORDER vacating apptmt of Ramona Powell & apptg Edward N. Leavy; FURTH ORD that aplt's br be filed on or bef 3/14/83 (NwKn) fvf	
3/21/83	ORDER dirg court-apptd counsel, on or bef 3/31/83, to file a stmt re reasons why he has failed to timely file aplt's br or some appropriate motion (Nw) fvf	
3-14-83	Appellant's brief (P-10) ayk	
3/25/83	ORDER discharging OTSC of 3/21/83; FURTH ORD that aple's br shall be filed on or before April 25, 1983 (Ky) fvf	
4/22/83	Motion of appellee to extend time to file brief to May 25th(m-22)mlh	
4/27/83	ORDER granting appellee's motion to file brief by 5/25/83 - nfx (NW) cmj	
5/25/83	Appellee's brief (m-25) sl list & appendix mlh	
9/1/83	SUBMITTED before Judges Mack, Ferren and Gallagher.	
2/2/84	OPINION Per Curiam. (p.179) JUDGMENT reversing judgment of the trial court.	
2/24/84	MANDATE ISSUED. mj	
4/13/84	Motion of appellee to recall mandate (m-13) mlh	
4/13/84	Motion of appellee for leave to file petition for rehearing en excess of 10 pages (m-13) mlh GRT/NW 4/25/84 cmj	
4/25/84	Appellee's petition for rehearing - cmj	
5/7/84	Appellee's submission of addt'l authority in support of petition for rehearing (m-7	
5/30/84	ORDER granting appellee's motion to recall mandate and granting rehearing; mandate to be returned forthwith; case scheduled for reargument before this division on Friday, June 8, 1984, at 10:30 a.m.; appellant by Wednesday, June 6, 1984, to file response to petition (MkFeGa) cmj	
6/4/84	Motion of appellant to extend time to file response to pet. for rehearing and to postpone summary argument (p-4) sl	
6/7/84	ORDER directing Clerk to schedule the argument previously scheduled for 6/8/84 to 6/20/84 at 1:30 p.m.; response of appellant to petition for rehearing shall be filed by 6/18/84 (MkFeGa) cwc	
6/18/84	Opposition of appellant to petition for rehearing (p-13) sl	
6/20/84	ARGUED before Judges Mack, Ferren and Gallagher.	

J-3122-74

PAROLE AND PROBATION INFORMATION

Senator SPECTER. Mr. Polansky, I have written to Chief Judge Moultrie on May 3 concerning some issues that I had in mind on the parole probation situation. I wrote him on April 18, rather, and he replied on May 3, and my letter and his reply will be made a part of the record, without objection.

[The letters follow:]

LETTER FROM SENATOR SPECTER

The Honorable H. Carl Moultrie I
Chief Judge
The District of Columbia
Superior Court
500 Indiana Avenue, N.W.
Washington, D.C. 20001

April 18, 1985

Dear Judge Moultrie:

The Subcommittee on the District of Columbia is planning a follow up hearing on the problem of drugs in the City for Tuesday, May 7, 1985, at 10:00 a.m.

It would be helpful for the Subcommittee to have the following information:

1. How many probation officers does the Court employ and how many are assigned to probationers with drug problems?
2. What particular problems do these probationers pose?
3. How are additional probationers supervised, is closer supervision required, how is that accomplished and what criteria is used to select these individuals?
4. Is drug testing performed on probationers, if so, at what intervals and what use is made of the results?
5. What further steps would you propose if limited resources were not an issue?

Finally, if the Subcommittee should require a court witness for the May 7 hearing, would you recommend someone who's familiar with the probation system and the drug situation that faces the District?

Your cooperation is always appreciated.

Sincerely,

Arlen Specter

Arlen Specter

LETTER FROM CHIEF JUDGE MOULTRIE

May 2, 1985

Honorable Arlen Specter
Committee on Appropriations
United States Senate
Washington, D. C. 20510

Dear Senator Specter:

Pursuant to your request and questions from our Probation Department, please note answers to the questions from Mr. Alan Schuman, Director of Social Services.

Mr. Schuman will be available, at your request, to amplify or defend these answers.

Very truly yours,

Chief Judge HC.Moultrie I

cc: Larry Polansky, Esquire
Mr. Alan Schuman

RESPONSES TO QUESTIONS IN SENATOR SPECTER'S LETTER

1. How many probation officers does the Court employ, and how many are assigned to probationers with drug problems?

The Social Services Division of the D.C. Superior Court employs 159 probation officers who engage in probation supervision, diagnostic report writing, and intake functions for adult, juvenile, and family services. This total includes probation officers assigned to the following functions: 36 adult presentence report writers; 66 officers supervising adult caseloads; 27 juvenile social study writers or intake officers; 30 officers supervising juvenile caseloads and providing specialized family services.

The Social Services Division does not have a specialized caseload(s) for drug-involved probationers. Drug cases are found throughout the adult and juvenile diagnostic and supervision workloads. The Division in 1984, and through the first quarter of 1985 reported 2,685 rearrests in its adult supervision caseload. Of these, 1,033 rearrested probationers, or 38.5 percent, were known to be drug addicts.

The Social Services Division utilizes a classification system to manage its adult and juvenile supervision workloads. Supervision is administered in accordance with special conditions which may be contained in the Court order, and written treatment plan developed for each individual placed on probation.

Classified Caseloads:

In adult supervision, each classification level relates to the probationer's need for services and the degree of risk which the probationer represents to the community. The classification levels and supervisory contacts listed below reflect the Social Services Division's capacity to provide adult probation services within the scope of its current resources.

Adult Classification Levels:

1. Maximum Supervision:

This supervision level consists of a high degree of face-to-face counseling, and follow-up on community referrals. Up until January 1985, this level consisted of only two (2) face-to-face supervision contacts per month between probation officer and client. This number was increased in response to a need for greater surveillance of clients who represent more risk to community security. The following contacts are now required:

a. Four (4) face-to-face contacts per month between probation officer and client;

b. One (1) home contact during the entire supervision period to be made at a time determined by the probation officer;

c. In addition to required contacts, periodic collateral contacts (job, community persons, agencies, etc.) should be made in order to closely monitor the probationer's progress.

2. Medium Supervision:

This supervision level requires a more moderate contact schedule as follows:

a. One (1) face-to-face contact per month between probation officer and client;

b. No required home contact;

c. In addition to the required contact, periodic collateral contacts (job, community persons, agencies, etc.) should be made in order to monitor the probationer's progress.

3. Minimum Supervision:

This supervision requires the least degree of contact as follows:

a. One (1) face-to-face contact every four (4) months with the probationer;

b. Monthly phone or mail reports;

c. In addition to the required contacts, random collateral (job, community person/agencies) contacts will be made as deemed appropriate by the probation officer.

In juvenile supervision, classification levels are determined in accordance with the degree of risk involved in the probationer remaining arrest-free during the supervision period. It is also a means of determining the extent of contacts needed to help the probationer remain arrest-free.

Juvenile Classification Levels:

1. Maximum Supervision

(1) Weekly face-to-face contacts with probationers.

(2) Bi-monthly home visits on a pre-arranged basis.

(3) Bi-weekly contacts with parent (visit, telephone, etc.)

(4) One school visit within sixty (60) days of beginning supervision and thereafter, at least one school visit each quarter during the period of supervision.

(5) Monthly verification of school attendance and school behavior.

(6) Monthly verification of employment.

(7) Collateral contact as necessary.

2. Medium Supervision

(1) Bi-weekly face-to-face contacts with probationers.

(2) One home visit within sixty (60) days of beginning supervision and thereafter, at least one home visit

every three months during the supervision period. Visits are to be pre-arranged.

(3) Monthly contacts with parent (visit, telephone, etc.)

(4) One school visit within sixty (60) days of beginning supervision and thereafter, at least one school visit every six months during the period of supervision.

3. Minimum Supervision

(1) Monthly face-to-face contacts with probationers.

(2) One home visit within sixty (60) days of beginning supervision and thereafter, at least one home visit every six months during the supervision period. Visits are to be pre-arranged.

(3) Monthly contacts with parent (visit, telephone, etc.)

(4) One school visit within sixty (60) days of beginning supervision, and thereafter, at least one school visit every six months during period of supervision.

(5) Monthly verification of school attendance and school behavior.

(6) Monthly verification of employment.

(7) Collateral contacts as necessary.

As with adult services, there is no specialized drug caseload for juvenile probationers. The Family Branch does have a policy of placing all juvenile offenders involved in distributing narcotics into the maximum supervision classification. When the Division's juvenile classification system was originally established in 1977, drug activity was not found to be a major determinant in predicting successful probation outcomes. This appears to have changed in recent years with greater drug involvement by juveniles, especially with more exotic and unpredictable substances (such as PCP which appears to be the new drug of choice).

For the ten month period ending March 21, 1985, of 1,511 juvenile offenders who were tested in detention, 404, or 27 percent, were found to be positive for PCP.

2. What particular problems do these probationers pose?

Drug-involved probationers require an inordinate amount of time to supervise. They have erratic and undependable histories - especially those heavily involved with hallucenogenics like PCP, etc. They are more likely to be rearrested, and pose a major threat to their own physical well-being.

Drug-involved offenders are disruptive to their own families. They are negative influences in the community, and poor role models for younger people while under the influence of narcotics.

Drug-involved juvenile offenders are especially difficult to counsel. Their behavior is unpredictable, and they require extraordinary attention. New supervision techniques and treatment modalities must be devised in an attempt to cope with these problems. In juvenile matters, the incidents of academic failure and school drop-out is very high for this group, however, if these same youth remain in the classroom, they are often disruptive and negative influences within the school.

An example of the erratic behavior of this type of probationer follows. During a recent routine office visit, an adult male probationer was obviously under the influence of an hallucenogenic drug. The probation officer left the room briefly to obtain treatment referral information. During this absence, the probationer broke a glass object in the room, and slashed both of his wrists with the jagged glass. Several probation staff were needed to restrain the man. It took hours to finally have the man committed to a secure treatment facility, after emergency assistance was obtained to treat the severe self-inflicted wounds.

The Social Services Division continues to train its staff in the special needs of this client group, and developing treatment modalities. More services must be offered by the Executive Branch, however, so that probation officers can broker truly effective treatment programs for the drug-involved offender.

3. How are additional probationers supervised, is closer supervision required, how is that accomplished and what criteria is used to select these individuals?

This question has been answered previously in response to the first question.

4. Is drug-testing performed on probationers, if so, at what intervals, and what use is made of results?

Drug-testing is a major problem. The Social Services Division is limited to a maximum of 25 referrals a day that it may forward to the Alcohol and Drug Abuse Substance Administration (ADASA). Within these limits, testing on probationers is performed as Court ordered, and routinely, referrals are made as new clients report. Known or suspected drug users are spot-checked. If results prove positive, clients are referred to ADASA for treatment and surveillance. Judges are notified as they stipulate in the Court order, or in the event a pattern of drug usage is discovered. Judges may be requested to order treatment on an in-patient or out-patient basis, or revoke probation, and place the defendant in a secure facility. This may be necessary because ADASA has major backlogs in its treatment programs, and long delays may be experienced by probationers in need of treatment who are referred by probation officers.

There is no systematic means of testing juvenile offenders in the District of Columbia who are under Court supervision. Limited spot checks may be handled at ADASA's Youth Abstinence Center, however, there is no ongoing surveillance program to which youth can be referred. As stated earlier, a high incidence of PCP usage among detained juveniles has been documented. The limited ADASA testing program does not even check for PCP because of the expense of this particular test.

In May 1984, the Social Services Division and Pretrial Services Agency initiated a drug-testing program for detained youth only which tests for PCP, Cocaine, Amphetamines, Opiates, and Multi-Drugs.

5. What further steps would you propose if limited resources were not an issue?

Regular urine testing for defendants entering the judicial system and those placed on probation supervision is a pressing need. Periodic testing and regular surveillance for offenders with patterns of narcotic involvement is needed at locations in the community (close to probation field units) so that results could be reported within 24 hours.

More residential in-and out-patient treatment facilities are needed for adults and juveniles. Testing, surveillance, and treatment programs must operate during evening hours so that employed individuals may partake in program services.

Drug testing and treatment services are an integral part of an intensive supervision program for probation. Traditionally, ISP programs involve small caseloads for each probation officer which are intensively supervised. Each probationer may have 5 to 7 case contacts on average per ~~day~~ WEEK including curfew checks. ISP programs have superior professional staff who are provided with state of the art training in counseling, treatment, and monitoring skills. A residential complex may be needed to enhance the safety of the community. ISP programs may have a community service component, and require an effective network with other public and private sector service providers.

Such a program would create a four-tiered classification system: minimum, medium, maximum, and intensive.

Intensive probation services for juveniles must of necessity involve close service linkages with schools and vocational training programs. For example, Social Services' Juvenile Restitution Program stresses strong ties with schools, service providers, and close monitoring of juvenile offenders in the community. As a result, Juvenile Restitution has had a significantly lower rearrest rate than our traditional probation supervision program.

Drug education and prevention programs in the schools must be stressed. Close monitoring of special categories of offenders - especially the Juvenile Drug Distributor - must be extended to reduce the contamination factor with others participating in rehabilitation efforts.

Comprehensive city-wide drug training programs for staff of public and private sector agencies is needed. Formal inter-agency procedural agreements among service providers is needed to avoid program duplication, and to coordinate services for clients who may have "fallen through the cracks."

We must keep an open-mind toward the real danger of the drug menance which confronts this city. We must also contribute to a new, heightened awareness at the national level of the ever-increasing threat that illegal narcotics pose to our quality of life.

NEW RULES REGARDING REVOCATION OF PROBATION

Senator SPECTER. He has responded with a number of items which he would like to have some assistance on, such as testing within 24 hours, so that there could be a determination of drug usage, and creation of an intensive supervision program.

My question to you is, What has happened as a result of the changes on the rules relating to revocation of probation which this committee urged and the court adopted last year? Are we getting more criminals off the streets earlier as a result of the changes in the procedures on revocation of probation?

Mr. POLANSKY. It appears as if more persons are having their probation revoked than in the previous year. When I compare 1984 to 1985 statistics, the numbers are not significant, but there are an increased number of probation revocations.

Senator SPECTER. Well, the rules only went into effect in January.

Mr. POLANSKY. True, January was the beginning of the implementation of the program.

Senator SPECTER. In January 1985.

Mr. POLANSKY. Yes; 1985.

Senator SPECTER. Now, prior to the time of the revocation, the old rule had been that when someone was on probation and charged with a subsequent crime, even a crime of violence, some were held for a brief period of time, many were released on bail, most were released on bail pending a later revocation hearing, and the experience had been that some who had been released on revocation were charged with even a third offense while at liberty while their revocation of probation had not been determined.

The concern that this committee expressed was that we should not have to wait until the trial on the second offense proved beyond a reasonable doubt that that offense had been committed without revoking probation on the first offense where somebody had been released as a matter of judicial grace.

And my overall question is, Is the system working better now, or is the public being better protected as a result of that change in the probation revocation ruling?

Mr. POLANSKY. We believe the answer to that is an emphatic yes. The point that you make is that there is a much earlier—that is, a same-day—decision on release for the defendant who has allegedly committed a second crime. Our records show that, during the months of February, March, April, and May combined, there were approximately 500 5-day holds, presented on that first day, which ensured that those 500 defendants did not go back out on the street for at least 5 days.

Senator SPECTER. Under prior practice, those 500 would have been at liberty, and might have been—would have been—able to commit additional offenses.

Mr. POLANSKY. A substantial number of them would have been at liberty on the new charge until the culmination of the adjudication of the new charge before a decision would be made on revocation of the probation. This program has speeded up the process considerably, and given us an early look at these people.

Senator SPECTER. So they have been detained, and then probation has been revoked, where appropriate, so that they are in custody while awaiting the trial on the second charge?

Mr. POLANSKY. That's exactly right, Senator.

Senator SPECTER. They are not at liberty to commit a third offense?

Mr. POLANSKY. That is true. I would say that the number of revocations has not changed substantially. The important point is the early hold, which ensures that the review for revocation comes much earlier and before the defendant can return to the street.

Senator SPECTER. There is some increase in revocation, but the problem was when probation was revoked at a later date, whatever the determination that was made, you would not necessarily expect any difference in that ultimate determination, but the fact of having that person at liberty during that interim posed a threat to the community of repeated offenses.

Mr. POLANSKY. That is exactly right.

ANALYSIS OF CHANGES IN PROBATION REVOCATION RULES

Senator SPECTER. Is there any way to quantify the improvement in public safety as a result of that change in the probation rule?

Mr. POLANSKY. Quickly thinking about it, I can't come up with anything specific, but I believe that an analysis of a previous year's activity to determine the number of crimes committed while awaiting a decision on probation revocation and a similar analysis for a comparable sample group in this current period—to see if the number of crimes charged while awaiting probation revocation has decreased by the persons involved—might be a way to determine the affect.

Senator SPECTER. If you could make that analysis and provide the subcommittee with that determination, we would appreciate it.

[CLERK'S NOTE.—The response to the above question requires extensive analysis which has not been completed. As soon as the research is completed, the report will be forwarded to the committee.]

AVERAGE TIME FROM DATE OF ARREST TO TRIAL

Senator SPECTER. What is the average time from the date of arrest to trial now? We did take the initiative, and supplied from this committee seven additional judges, appointed last year, and through the initiation of this subcommittee, 21 additional prosecuting attorneys were also appointed.

Has that had an effect on decreasing the lapse in arrest to trial?

Mr. POLANSKY. This time, we anticipated your question, Senator, and did a little homework.

I will give you these figures very precisely. We looked at that from two different directions. One was by looking only at those who had gone to trial and sentence to determine what the difference is on those.

The average felony time for arrest to sentence for those who are tried, convicted, and sentenced, in 1984, was 323 days. In 1985 that reduced to 294 days. In my opinion or, I believe, yours, 294 days is not acceptable, but it is faster than before and I must remind you that the seven new judges did not take office until November of last year and we are just now beginning to feel this effect upon the system.

Senator SPECTER. So arrest to sentence in 1984 was 323 days, and arrest to sentence in the first few months of 1985 was 294 days.

Mr. POLANSKY. Yes; 294 days, so we have some small improvement.

Senator SPECTER. I wouldn't say that was small. I would say that was significant, since the judges have been there only for a short period of time.

Mr. POLANSKY. In misdemeanor cases for a comparable group of sentenced defendants, it has gone from 159 days to 133 days. So, again, we have shown some improvement in the first few months of 1985.

Senator SPECTER. What would your projection be as to what the statistics will be for the full calendar year 1985 if you could make a projection?

Mr. POLANSKY. It is a difficult projection to make. Our hope is that we can get felonies down to 180 days, and misdemeanors down to 90 days or less, hopefully less.

STATISTICS ON BAIL AND JAIL DEFENDANTS

Senator SPECTER. Do you have the statistics on arrest to sentence on people on bail contrasted with arrest to sentence on people in custody?

Mr. POLANSKY. No; the only statistics I have that distinguish "bail" from "jail" defendants has to do with how many cases are pending, whether they are in jail or on bail, and what stage their case is in. I have not analyzed sentence differences between bail and jail defendants.

NEW FELONY SENTENCING GUIDELINES

Senator SPECTER. I note that Chief Judge Moultrie has acted as of February 7, 1984, to have felony sentencing guidelines put into operation. What is the status of that effort?

Mr. POLANSKY. The Sentencing Guidelines Commission has been working on the creation of guidelines, but if you are at all familiar with the Pennsylvania process, this is a lengthy process and a very difficult one. We now believe that the final result of the Sentencing Guidelines Commission will be available by approximately January 15, 1986. There is no completed sentence schedule available yet. That is, the guidelines charts are not yet finished. There is still discussion and compromise taking place. We have a wide spectrum of people taking part in that process.

Senator SPECTER. Why does it take so long?

Mr. POLANSKY. Well, you have to consider every possible position. That is, that of the liberals and that of the conservatives, and, for example, questions like how much weight do you place on prior criminal record. Does one utilize a point schedule? Should you take into consideration the population of the prison? There are strong positions on both sides of those issues. Whether the guidelines would include a consideration of whether the jail is overcrowded is a question, and there are different positions, and very strong positions on that, I might add.

Senator SPECTER. Well, interrupting on that point, I do know that we have had substantial—we have had evidence before this Subcommittee on the District of Columbia, and much evidence before the Judiciary Committee on this subject, that judges do take into account the status of the prison in terms of overcrowding, and that is a very unfortunate situation, because that ought not to be a factor. Custodians and the prisons ought to deal with that, and judges oughtn't to deal with that, and if your sentences result in the prisons being overcrowded, that is a problem for somebody else.

I would hope that the judges would not take that into account on sentencing, to make that the responsibility of the Mayor and the Congress—the Mayor and the Council and the Congress.

Mr. POLANSKY. I should, perhaps, inform you that the membership of the Commission, however, includes members of the bar, the public, the

Council, and the D.C. executive branch, as well as, members of the bench. Many sides of this issue are presented at the table.

FASTER TIMETABLE FOR IMPLEMENTING GUIDELINES

Senator SPECTER. Mr. Polansky, will you carry back my message to Chief Judge Moultrie that I think the timetable, from my perspective, I think the perspective of the subcommittee, is unacceptable, and ought to be much faster, that the considerations are well known. You and I can sit down, and Chief Judge Moultrie and Chief Judge Pryor, the four of us, and we will bring Senator Lautenberg in, too, can make that determination in the course of a day, and could write those and we could get them into effect, and this subcommittee would really urge that completion, and we would consider helping you with resources if that is an issue, but there ought to be sentencing guidelines put into effect.

I would ask your opinion on that, Chief Judge Pryor. Do you think that it is realistic to ask the Sentencing Commission to make a determination in a shorter period of time then 2 years on sentencing guidelines, given the vast amount of work done on this subject in so many jurisdictions with so much precedent available on this subject?

Judge PRYOR. I would have to say that I think on balance we could move more quickly.

Senator SPECTER. Well, I would certainly encourage that.

Mr. POLANSKY. I will carry your message back, Senator, but I hope it is not Rome when I get there.

Senator SPECTER. It is not what?

Mr. POLANSKY. I hope they don't shoot messengers who bring bad news.

Senator SPECTER. Well, we could have another hearing. We don't have to have you carry the message.

Mr. POLANSKY. I must tell you that I am a member of the Commission, and that these issues really have to be fully debated. It has got to get out on the table, and the people involved have got to get the opportunity to voice their positions. What will eventually result, I think, will be a very good and reasonable compromise but, having taken part in it, I can understand why it has taken this long. I must say that in my own opinion, and I will carry your message back, the January date is a reasonable approximation of when the Commission will complete its deliberations.

Senator SPECTER. Well, I would urge them to start with the work product of other jurisdictions, of which there are plenty, and to move from there in terms of amendments or modifications, and sit down and get it done, because this jurisdiction needs sentencing guidelines.

BACKLOG IN CIVIL AND DOMESTIC RELATIONS CASES

Mr. Polansky, what is the status of the backlog in other branches, the civil branch, the domestic relations branch, and so forth? Any improvement there? Last year you had some elaborate charts. Where are your charts?

Mr. Polansky. My charts are back at the office. We didn't want to bore you with statistics another year.

Senator Specter. Would the charts have not been——

Mr. Polansky. The charts would have shown some good points and some bad points. We actually have made progress in the criminal division and we have made progress in the civil division. We have, however, fallen back in the domestic relations section of the family division, and I guess that was to be expected. Again——

Senator Specter. How about on the civil cases? What is the average length of trial from the case being at issue and verdict, or disposition?

Mr. Polansky. We run three different tracks for civil cases. On small claims, the process is very, very quick. The basic small claim is heard in 3 weeks and is out of the way. We have what is comparable to the major case program in Philadelphia, that is, we have a civil I program where three judges handle civil cases on individual judge calendars. Those cases approximate 18 months from filing to disposition, and that is an average. And then there is what I guess I will have to call the regular civil program, the civil II program, which is run on a master calendar. These cases take slightly over a year from filing to disposition.

In comparison to a jurisdiction like Philadelphia or Boston, that is very good. However, it could be better.

FIVE-YEAR STATISTICS OF CRIMINAL CASES

Senator Specter. Mr. Polansky, I will not take the time now to ask you to recite all the statistics, but I would appreciate it if you will make those available to us.

Mr. Polansky. Certainly.

Senator Specter. Where we stood in the prior calendar year, contrasted with a 5-year period before, so we can see what progress we are making, and make an evaluation as to the adequacy of your resources there.

[The information follows:]

Major Criminal Case Pending Report
1980 - 1985

	1980	1981	1982	1983	1984	1985 (June 30)
U.S. Misdemeanors	2,399	3,683	3,197	3,500	3,328	3,373
Felony Indictments	1,517	1,398	1,886	2,052	2,488	2,355
Juvenile	1,342	1,049	1,067	1,240	1,238	1,251
	5,258	6,130	6,150	6,792	7,054	6,979

Major Criminal Case Filing Report
1980 - 1985

	1980	1981	1982	1983	1984	1985 (6 months)
U.S. Misdemeanors	13,813	15,578	16,179	17,343	16,169	9,054
Felony Indictments	3,138	3,631	3,934	4,161	5,261	2,636
Juvenile	4,731	4,323	4,012	4,129	4,264	1,847
	21,682	23,532	24,125	25,633	25,694	13,537
						x 2
						27,074

In short, despite constantly climbing filings, the additional resources have stopped the steady increase in backlog and, finally, we have begun to reduce that backlog.

* Straight line projection of 1985 filings.

DIFFERENCE BETWEEN COURT'S REQUEST AND DISTRICT'S RECOMMENDATION

Senator SPECTER. Senator Lautenberg?

Senator LAUTENBERG. I am listening with interest to the discussion. The chairman of the subcommittee has an intimate knowledge of the workings of the court system, and I respect it, and I can't contribute much to that dialog except, certainly, to be cognizant of what these delays mean, and the concern about people out on bail being, in many cases, a continuing menace to the community.

I share the concerns about moving that process along. As a result of that, we come into the area of considerable familiarity to me, which is budgets and finance, and computerization and word processing, et cetera. That is my background.

I just wanted to try to understand what the impact is, if you can relate it directly, of the differences in the recommendation of the District Budget Committee and the court's budget recommendations, to see whether you can translate that into some specific influences on the calendar, on the ability to conduct the court's responsibilities as expeditiously as possible. Such things as equipment—there is a major difference Mr. Polansky, who has the major responsibility for some of the detail of that?

Mr. POLANSKY. I think I do, sir.

Senator LAUTENBERG. OK. The difference between that which is being recommended by the city and that we should program is, as I saw it—let me just find the right spot—about, almost, $8 million, and some 93 positions. A large part of it is built in. Is that a renovation? I didn't quite understand. Or is that a——

Mr. POLANSKY. That $5 million of the $8 million represents the transfer from the District government to the court system of the responsibility for its own security, maintenance, et cetera, and that involves 69 of those 90-plus people as well as $5 million.

Senator LAUTENBERG. There is a major change in this single year. That is not going to be the annual maintenance?

Mr. POLANSKY. That actually is, but it is money being transferred from the District's executive branch budget to ours. It would not be new money. It would be a transfer from someplace else in the budget, perhaps from the Department of Public Works.

Senator LAUTENBERG. OK. Then that difference, that is not being recognized in the District's recommendations, at least in their line items here.

Mr. POLANSKY. They have asked that we postpone consideration until the precise figures are known, but that doesn't mean the services are not to be performed. They are performing them out of their budget in the Department of Public Works.

However, I must tell you that we are not satisfied with those services. We think that security is less than adequate, and one need only walk through our building once to determine that the custodial services are somewhat less than adequate. So our figure is probably a little higher than their figure.

Senator LAUTENBERG. OK, but by not including it in their itemized budget, they are not agreeing to the transfer, and you are suggesting that they are initiating the transfer from the District's executive branch to you?

Mr. POLANSKY. Yes; they are just not ready to agree on a precise dollar figure with us, and they have asked that the matter be held in abeyance until we can come to some agreement on what the real cost is.

Senator LAUTENBERG. When might that be, in terms of time?

Mr. POLANSKY. We had hoped it would be by now. I hope that 6 months from now we will be done with it.

Senator LAUTENBERG. Mr. Chairman, what is our schedule in terms of approval of the budget in the Appropriations Committee?

Senator SPECTER. We hopefully will have final action before September 30, so that we do not become part of a continuing resolution and working back from that. We will have to have a markup here relatively soon and then meet in conference with the House.

Senator LAUTENBERG. Maybe that could be stricken from here, because it is not for us to talk about, really.

Mr. POLANSKY. My guess is that it will not appear in this year's budget, and that if the transfer occurs midyear, they will do that by a transfer, which will come here as a reallocation, of the fiscal year 1986 budget or as part of a supplemental.

DIFFERENCES IN THE CHILD ABUSE AND NEGLECT PROGRAM FEES

Senator LAUTENBERG. In terms of the other differences, the most pronounced difference is in the superior court budget, and there are a number of items. The largest single factor is the Child Abuse and Neglect Program fees.

Mr. POLANSKY. May I respond to that, Senator?

Senator LAUTENBERG. Yes.

Mr. POLANSKY. We have done the best that we can to predict what those fees are. This is the first year under a new rate schedule set by the D.C. Council for lawyers who represent persons in child abuse and neglect cases. It is extremely difficult to project, I must admit—and I have admitted that to the Budget Officer for the District. Their calculation could very well be as close as our calculation on this one. There is just no precise way to do it.

We can show you how we calculated what we asked for.

Senator LAUTENBERG. Excuse me. These are fees paid to court-appointed attorneys?

Mr. POLANSKY. Yes, sir; those who represent parents and children in child abuse and neglect cases.

Senator LAUTENBERG. Who do not have the ability to retain their own. It is a legal service?

Mr. POLANSKY. It is. I think it may be automatic for the child. I guess the parent, if not indigent, would have to pay for representation.

Judge PRYOR. What you are talking about is providing legal services to people who can't afford them.

Senator LAUTENBERG. Of course, unrepresented children, I take it?

Judge PRYOR. That is correct.

Senator LAUTENBERG. OK. So, these are fees that are paid by the court system and, so, that increase, is that due to the increase in the caseload?

Mr. POLANSKY. No, sir; this was a change in rate that was provided by statute by the D.C. Council to make this attorney fee payment commensurate with criminal justice representation payments. For many years there was no payment for representation in this area. The Council acted about 2 years ago to ensure that attorneys would be paid for their services in this area, and have now acted to make sure that those payments are consistent with payments to other counsel who represent indigent criminal defendants.

Senator LAUTENBERG. Just give me an idea, because I mentioned legal services, and then I showed somewhat my lack of familiarity with the terminology, as well as, sometimes, the structure of the organization. I know that legal services is a Federal program for those unable to afford to retain their own representation.

Part of the debate we have been having there, I know and the chairman knows, is perhaps contracted fees to private law firms to take over some of these cases.

I was struck by the de minimus character of those fees, and wondering what kind of representation one could get.

Now, I come from a company that had big city legal representation, and nobody can afford those fees of big Philadelphia and New York law firms.

Senator SPECTER. The U.S. Senate.

Senator LAUTENBERG. You get them cheaper.

Senator SPECTER. By substantially reducing the pay.

Senator LAUTENBERG. Yes; you can get the attorneys, but you can't pay the fees.

CURRENT FEE SCHEDULE FOR INDIGENT REPRESENTATION

Can you give me an example of what that fee structure might look like? How is it established?

Mr. POLANSKY. Well, it is now established by statute as $35 an hour for services performed in court and out of court. It is a flat-rate fee per hour.

Senator SPECTER. What did your company pay, Senator Lautenberg?

Senator LAUTENBERG. Not to Judge Rifkind in New York. Did you ever hear of him?

Senator SPECTER. Ten times that.

Senator LAUTENBERG. Oh, my gosh. More.

Senator SPECTER. More than $350 an hour?

Senator LAUTENBERG. Of course, this is not, of course, not a Republican not advertising.

Mr. POLANSKY. You might convince Senator Specter to go back in practice.

Senator LAUTENBERG. I can't convince him of that, any more than I can be convinced, because I assure you——

Senator SPECTER. I can be convinced, but not by the pay. I can be convinced by the electorate.

Whatever the lawyers' fees for Senator Lautenberg's firm, they were more than 10 times what you are representing, and those lawyers made considerably less than Senator Lautenberg did.

Senator LAUTENBERG. What is this, a "pick on juniors" morning?

Senator SPECTER. It is, but I don't know who is junior.

Mr. POLANSKY. If you think you are in the wrong business, where am I?

DEDICATION AND COMMITMENT OF GOVERNMENT EMPLOYEES

Senator LAUTENBERG. We all do this, including the Chief Judge. There are very few appointments to the bench at higher levels that don't require substantial income sacrifice, and that is the way it ought to be.

I have got to tell you something. I have learned—I won't take much time, Mr. Chairman—I have learned about the level of sacrifice that is made here in Washington and throughout the Government in the couple of years that I have served in the U.S. Senate.

It is so easy in the outside world to pick on the malingerers, the bureaucrats, that do not produce, et cetera, until you get here and see what people do, people on my staff, people throughout this organization, what they do.

They go so far beyond the compensation level that they could easily get in the outside world. I come out of the corporate world, and believe me it has just as many malingerers, just as many malcontents, just as many problem people, but you couldn't pick on them, at least nobody except these people inside.

Here, that is a favorite game, and I am—I have got to tell you—I am impressed, pleased. I demand a lot from staff, and I have never seen better performance than the people I see working in Government. Again, the exceptions are there, but the loyalty, the commitment, the dedication, late nights, and things of that nature. I come back to the office, and people are always there. Sure, they put away the cards when I walk in, but, anyway, so there is that kind of commitment, and I respect it enormously, and that is why I ask what one gets when you contract on the outside for representation. I guess that you can get decent representation at those rates, especially from those who have not yet built up a practice, and so forth. And there are those who do it and say that it is the commitment. The change is so enormous. What was the rate?

COMPARISON OF FEES FOR INDIGENT REPRESENTATION

Judge PRYOR. Well, if I could just say, when I used to be a young lawyer in court, we used to operate without any compensation.

Essentially, just to give you a quick picture of it, you talked about the child who has been alleged to have been abused or battered, and two parents who surround that child. In the past, what we did was simply call on lawyers who had good spirit and willingness to serve to represent those separate parties, and generally that representation comes in two or three stages. They appear in court, have a hearing, and decide what should be done about it.

Now, they do the same thing with the same expertise, and they are compensated in the manner that Mr. Polansky just mentioned. That is the basic change.

Mr. POLANSKY. There was an interim step, where they gave them the munificent sum of $30 a hearing to a maximum of $100 for a case, depending on the number of hearings that were held, and $100 if they represented a case for termination of parental rights. That was the old set of fees on the first bill that was passed by the Council.

CONCERN OVER COURT'S AND DISTRICT'S REQUEST FOR FEES

Senator LAUTENBERG. Very interesting.

Why is there the remaining difference in terms of the court's request and the District's recommendation that we strike out those fees? And, by the way, aren't they assuming, in this matter of the fees for representation and the child abuse and neglect cases, aren't they saying that, "Look, this is life, and we have got to pay for this stuff, and this is what is recommended?"

How can there be a dispute? Is it a projection we are talking about?

Mr. POLANSKY. Yes; the dispute is only as to how accurate we can get in this unknown. Every year I have been with this court, when dollars for services like this were short they have provided us with supplemental funds to provide those services, so that, in my words, the District is "shooting crap" on whether it will have to come up with additional money later on.

Senator LAUTENBERG. The difference is so enormous. They are projecting $840,000, you are saying $1.4 million, and there is——

Mr. POLANSKY. There is a half-million-dollar difference.

Senator LAUTENBERG. Is a difference of $550,000.

Mr. POLANSKY. My admission against interest: I think they could just as easily be right as we could.

Senator LAUTENBERG. That is not helpful in the budgetary process.

Mr. POLANSKY. I understand.

DIFFERENCE IN FUNDING FOR POSITION REALLOCATION

Senator LAUTENBERG. The reallocation factor, that is another major item of $450,000. What is that, please?

Mr. POLANSKY. Approximately 8 years ago, the court reevaluated and classified all personnel positions, from 800 to 900 positions in the organization, and determined with its own personnel office that it would take approximately that much money—and we annually keep the number accurate—to bring the positions to their warranted classification levels. It has never been funded. In good faith to our employees, we have asked for these funds each year since that analysis. We have never gotten them.

Senator LAUTENBERG. These are the years of neglecting to implement the program, and you keep hoping this is the year?

DIFFERENCES IN COURT'S REQUEST AND DISTRICT'S RECOMMENDATIONS

Mr. POLANSKY. That this is the year that someone will be responsive. Which really brings us to what the major differences are, and that is: the 18 positions that are not funded, representing about $400,000; and equipment in terms of microfilming and word processing equipment for another couple of hundred thousand dollars. That is the major difference about $600,000. It is in three main areas: microfilming; word processing; and 18 staff people needed to support the operations.

Senator LAUTENBERG. OK. That doesn't account for the difference of roughly $2.6 million, I would think, 18 positions. What are those positions? Some of them are modest skill positions, as I saw that, input clerks and——

Mr. POLANSKY. The 18 positions represent——

Senator LAUTENBERG. Are they all bench positions? Is that it?

Mr. POLANSKY. No, sir; they are all staff support positions. If I could refer you to Judge Moultrie's testimony, he delineates the 18 positions on the first page of his testimony.

LEASE VERSUS PURCHASE OF WORD PROCESSING EQUIPMENT

Senator LAUTENBERG. OK. The thing that I wanted to ask you about is, as you get into the word processing and equipment necessary to support your activities, have you considered leasing this equipment? I know that often a lot of the contracts for this equipment, especially if there is a shortage of capital, are a cheaper way to go. I don't know whether you have looked at it.

Mr. POLANSKY. We have, sir. We have evaluated that and there is a short-term saving, but a long-term cost. We don't throw our equivalent away at the end of the 5-year period, as some profit- and tax-motivated organizations do. We are going to keep them almost forever. For us, there is a substantial saving in being able to purchase, long term.

Senator LAUTENBERG. I caution you, also, though, to remember that changes that we are seeing technologically, that in many cases——

Mr. POLANSKY. The obsolesence.

Senator LAUTENBERG. I would say from my experience in the corporate world, you go short term, or relatively short term, on a lease, and know that if we cancel this thing, it is someone else's problem, and not ours, but especially when there is such a stringent review of budgetary commitments. I think that may be something worth doing, and would ask, if you could, to submit for us any of the reviews you have done in that area.

[The information follows:]

ANALYSIS OF LEASE VERSUS PURCHASE OF WORD PROCESSING EQUIPMENT

The following analysis is based on 19 word processing machines at a purchase cost of $114,181.50.

Leasing (rental).—3 years at $4,053 per month equals $145,908; 4 years at $3,197 per month equals $153,456; and 5 years at $2,741 per month equals $164,460.

As you can see, at the end of 3 years we would have paid $145,908 for rental of the units and would still not own the equipment. It is anticipated that we will keep this equipment a minimum of 5 years and there really is no limit to its life, other than the units falling apart, so long as they continue to perform the tasks for which they were purchased.

Even considering the monetary cost of a $114,000 purchase in 1986 versus payments of $49,000 in rental each year and understanding that purchased units will require either fixed price maintenance contracts or maintenance expenses as required, we still believe that the D.C. taxpayer benefits in the end as a result of our decision.

INCREASE IN NUMBER OF NEW CASES

Senator LAUTENBERG. Chief Judge Pryor, your report talks to a new procedure for affording certain cases expedited treatment. It goes on to say, "The implementation of this procedure will not reduce the court's backlog." Would you just explain that paradox in perspective, please?

Judge PRYOR. Well, the major problem that we face is a substantially increasing number of new cases. The fact that we have handled the cases that we presently get more efficiently will not in the end solve the problem. That is what we mean.

And you cannot help but notice, if you think about what we heard this morning, and every time I hear it I always walk away thinking about it. If you listen about how our court system is getting new trial judges, new commissioners, new prosecutors, all those new matters in the court that are appealed to us, common sense tells us that the appellate court has to think long and hard about how it is going to handle this new business.

Now, my modest approach is to try to screen and streamline the way we handle our cases, but I am simply saying that I don't think that is the permanent answer. That is all I mean.

Senator LAUTENBERG. You are saying that the efficiency goes just so far, and then you face the reality of the numbers game?

Mr. POLANSKY. The increasing filing rate is not being matched by the improvements in efficiency. The filings are still getting ahead of the improvements.

Senator LAUTENBERG. I would like the opportunity to learn more about what you are doing, and if we can arrange it, Your Honor, or Mr. Polansky, if it is possible through staff and the calendar, that we can arrange to sit down, I would like to do it. We don't need the chairman for that. He is all caught up, and I am kind of playing catchup.

Mr. POLANSKY. We would be delighted to have you, Senator.

Senator LAUTENBERG. OK. Particularly in terms of the new systems you are introducing.

Judge PRYOR. Yes.

Senator SPECTER. We have a vote on now, so we will not be able to go much longer, and I think we are pretty well finished in any event.

RESOURCES NEEDED TO REDUCE BACKLOG IN CASES

What I would like you to do, Chief Judge Pryor and Mr. Polansky, I would like you to take a look at your existing resources and tell this subcommittee how you could marshal them on the issue of public safety. I would like to pursue the question of your appeals, how many people are on bail, what public safety threat is posed there, and what ought to be done in the interests of public safety, and I would ask the same question, Mr. Polansky, of the trial courts, how you can marshal your existing resources to bring these cases to trial faster where people are on bail.

At the same time, I would ask that you tell this subcommittee what resources you would need in the trial courts to meet a 90-day trial period. That is the speedy trial rule in a Federal court, and in my own judgment, cases ought to be tried within 90 days. That really is the timeframe for the trial of those cases. You are way off on this. I would hope to get to 180 days. I would like to know what it would cost to try cases within 90 days, and I would also like to know, in an additional, separate question, what it would cost to try other cases such as jail cases, within a 90-day period, and what it would cost to meet minimum standards which have been established by a variety of studies in civil cases, what is the desire, the lapse of 6 months from the time of issue until the time of trial? Or whatever it is. I am not au courant on that. Also, in domestic relations cases, what it would cost to have a system which met the standards established by the various judicial institutes, bar associations, and professional study groups, to have a system that really met those standards.

Mr. POLANSKY. What it would take us to meet those standards?

Senator SPECTER. Yes; what it would take you to do it, and what it would cost to do.

Judge PRYOR. Senator, if I might just briefly state, since I perceive that you have a great interest in this: It seems to me it is a stubborn problem that won't go away. If you look at half of the system; that is, what goes on at the trial court, it simply means that at some future point we are going to have to look at the other half after we do all these good things.

Senator SPECTER. What is the other half, Chief Judge Pryor?

Judge PRYOR. The appellate process.

Senator SPECTER. Oh. I am prepared to listen. The same question is for you. I start off with the backlog we talked about, the intolerable situation of 513 average, and 2 years in some cases. I would like to know what it would take for you to meet a desired standard.

Judge PRYOR. I think part of the 513 days is encompassed in what we are trying to do, and I welcome that. I just want to let you see that I look at as a system, rather than one court separate from another court. They both work together.

Senator SPECTER. Chief Judge Pryor, I didn't mean to suggest that it wasn't. I think it is. It is an integrated system, obviously, and I start with the question of your delays and what you need by way of resources.

Judge PRYOR. What is stubborn is whether we should change the appellate design or stay with what we have. I am not sure of the answer to that.

Senator SPECTER. I will submit a supplemental nontechnical report to Senator Lautenberg on this.

Senator LAUTENBERG. Thank you.

Mr. POLANSKY. Before you leave, Senator, my son does live and vote in New Jersey, but I live and vote in Virginia.

Senator SPECTER. Did you say how your son voted in New Jersey?

Mr. POLANSKY. He votes right and often. [Laughter.]

Senator LAUTENBERG. Thank you very much.

Mr. POLANSKY. Thank you.

Senator SPECTER. All right. But I would like to have you pursue that, what it takes to do it right.

Mr. POLANSKY. It is a challenge. It is a good bit of work, but we would be delighted to do that.

Senator SPECTER. This subcommittee would like to have the answers. Thank you very much.

Mr. POLANSKY. Thank you.

SUBMITTED QUESTIONS

Senator LAUTENBERG. Mr. Chairman, I might have a few questions that I would like to submit and ask for responses in writing, if that is all right with you.

Senator SPECTER. Yes; by all means. We will hold the record open for 10 days for submission of questions and answers in writing.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

D.C. COURT OF APPEALS

SENATOR LAUTENBERG:
1a. Your request of $165,000 for Equipment and Equipment Rental includes $130,000 for replacement of 10 word processors in judges chambers. (The other items are $15,000 for open shelf filing and $20,000 for new carpeting). The District's recommendation is $94,000 but reduces funding for word processors to $59,000. How many word processors do you have in judges chambers now? What kind are they? How old are they? How much did they cost originally? What do you intend to do with them when you acquire new word processors?

CHIEF JUDGE PRYOR:
1a. At the present time, there are ten word processors in judges' chambers: one for each active judge and one for all retired judges. They are Compucorp Model 665 and were purchased in 1981. Their original cost was $12,844 each. When replaced, some would be used in the offices of the Clerk of the Court and the remainder in the court system to be used appropriately.

SENATOR LAUTENBERG:
1b. In your Annual Report, you mention recent improvements in your data processing system. Would it be possible to modify this system to provide word processing instead of procuring separate word processing units? Wouldn't this be less costly?

CHIEF JUDGE PRYOR:
1b. The data processing system currently in use is not sufficiently large to carry the capacity of the word processors. It is conceivable that additional memory and disc drives could be purchased to accommodate the word processors; however, this would severely limit the choice of word processors to those compatible with the DEC system. The criteria now set for new word processors is such that many brands are excluded because of the special needs of the chambers (e.g., footnoting capability, transfer of footnotes to text and vice-versa, etc.). To limit the choices even further would subvert the purposes of the replacement. Since each chambers is an independent work unit, flexibility regarding dictionaries, working hours, and other varying requirements would be curtailed. Further, central computer down-time for maintenance, planned or unplanned, would disrupt the work of the chambers. Since very substantial upgrading of the central computer would be required as well as purchase of new terminals and printers for each chambers, the significance of any savings in cost of each word processing unit would be diluted.

SENATOR LAUTENBERG:
2. Your Annual Report also refers to "a new procedure for affording certain cases expedited treatment" but goes on to say that implementation of this procedure will not reduce the Court's backlog.

* What is this new procedure? Has it been implemented as planned?

*What effect has it had on your caseload?

CHIEF JUDGE PRYOR:
2. To answer the second part of the question first, the procedures contemplated have not yet been implemented, as they depend upon the approval and subsequent hiring of a staff attorney and secretary (thus, there has been no effect on caseload). The primary function of the individuals in these new positions will be to screen appeals at a very early stage, starting with civil cases and then proceeding to criminal and agency cases. Cases selected would be those which might be dismissed on procedural grounds by show-cause orders as well as those which could be placed on an expedited settlement and/or briefing schedule, delimiting not only the time but also the length of the briefs after which argument, if considered necessary, would also be expedited. Although this is expected to have some significant effect upon as many as 200 to 400 appeals each year, it will not solve the problem of the more than 2,000 cases now pending or the ever-increasing number of appeals filed each year. Rather, it is expected to, at most, prevent the backlog of cases and the average time on appeal from increasing to totally unmanageable proportions.

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SENATOR LAUTENBERG:
1a. You request $260,000 and 10 positions for the Multi-Door Dispute Resolution program. The District recommends $100,000 and 5 positions. Would you explain in more detail what this program does?

CHIEF JUDGE MOULTRIE:
1a. The Multi-Door Dispute Resolution Program, sponsored by the Superior Court and the ABA, is part of a nation-wide movement to relieve Court congestion and, at the same time, increase the options and ultimate satisfaction of citizens with the resolution of their disputes. The program is designed to transform the Courthouse into a dispute resolution center offering a variety of options including arbitration, mediation, and other non-traditional dispute resolution techniques as well as litigation. One result is the diversion of many cases from Court dockets. With the availability of an ever-increasing range of dispute resolution services in the Courthouse and in the District of Columbia community, the public has access, through the Multi-Door Program, to many "doors" or alternatives for handling disputes.

The Multi-Door Program's Intake Center is an integrated system for the screening of cases and the referral of individuals involved in disputes. Center staff inform disputants about alternatives to litigation in the hope that many disputes will be resolved without Court action. Individuals are often referred to dispute resolution programs within the Court and elsewhere in the community where disputes are resolved prior to the filing of a law suit. In this way, many cases are diverted from the Court system.

The Multi-Door Program currently offers two Court-based alternatives to litigation. The first is a new Small Claims Mediation Program. Persons involved in Small Claims disputes can enter mediation at no cost either on their day of trial or prior to the filing of a Small Claims case.

A second Court alternative is a Voluntary Arbitration Program available to most civil litigants in Superior Court.

In November, the Multi-Door Program will open a new Domestic Relations and Intrafamily Mediation Program. Mediation will be available at no cost to parties involved in Domestic Relations cases filed in Court concerning child custody, support or visitation, spousal support and/or property division. In addition, people involved in Intrafamily cases will be offered mediation to resolve issues concerning visitation or personal property division or to work out the details of a Civil Protection Order **AFTER** a judge has ruled on the petition or motion.

In the future, the Multi-Door Program plans to offer additional dispute resolution options to District citizens, all of which will be designed to reduce Court caseloads. Among the program options under active consideration are a mandatory arbitration program and an effort to accelerate the processing of selected Civil I and Civil II cases.

SENATOR LAUTENBERG:
1b. How many small claims and civil cases did this program handle last year?

CHIEF JUDGE MOULTRIE:
1b. Approximately 310 persons involved in Small Claims cases and about 200 persons involved in other civil cases came to the Intake Center for dispute resolution assistance in the first 5 months the Multi-Door Program was in operation.

In the first 2 1/2 months of the Multi-Door's Small Claims Mediation Program, about 600 Small Claims cases were mediated.

SENATOR LAUTENBERG:
1c. Do you have 10 staff actually on board at this point?

CHIEF JUDGE MOULTRIE:
1c. There are currently 7 Multi-Door staff on board.

SENATOR LAUTENBERG:
1d. What would the effect of a 5 position reduction be? How many more cases would go through the usual court proceedings as a result?

CHIEF JUDGE MOULTRIE:
1d. A reduction to 5 staff positions would jeopardize program operations. Three staff are essential to serving the Intake clients and to handling related Intake responsibilities such as liaison with all 300 referral agencies, regular updating of the Referral Manual and recordkeeping; two staff are essential to the planning and operation of two mediation programs--the Small Claims Mediation Program and the Domestic Relations Mediation Program which will begin this fall. Mediation responsibilities include overseeing all volunteer mediators, scheduling all mediation sessions, meeting with litigants to interest them in mediation, follow-up and recordkeeping. The Multi-Door Deputy Director is needed to oversee program operations, to develop working papers, to assess program effectiveness, and to serve as liaison with the

community. And finally, the Program has one secretary who is essential for preparing and distributing Program material and handling correspondence, general typing and filing. It is too early in the program to assess the impact on the Court caseload were there to be a reduction in the size of the Multi-Door staff.

We estimate that 1,500 - 2,000 Small Claims cases will be diverted by the Multi-Door Program in its first year of operation. Most of these cases will be diverted on the parties' day of trial.

Mediation of non-day of trial Small Claims cases may not "significantly reduce" new filings in Small Claims Court in the first year of operation of the Multi-Door Program. Diversion of large numbers of cases prior to filing is dependent in large part upon broad community awareness of, and confidence in, the new Mediation Program. Since the program just began on April 4, we expect it will take time before that awareness and confidence are developed. In the future, however, we do expect to see a significant reduction in Small Claims filings.

SENATOR LAUTENBERG:
2a. You are also requesting an additional $57,000 and 3 positions for small claims court (current staff 14 positions). This is in anticipation of an increase in filings as a result of raising the small claims limit from $750 to $2,000. At the same time, you say that the Multi-Door Dispute Resolution program has the "potential for diverting large numbers of small claims ... cases." What is your estimate of the number of small claims cases that will be diverted by Multi-Door Dispute Resolution?

CHIEF JUDGE MOULTRIE:
2a. The number of potential Small Claims cases which will be diverted from filing by Multi-Door Dispute Resolution will probably be relatively insignificant. In addition to the fact that we expect 35,000 Small Claim filings this year - up from 25,000 last year - the real impact of the program will be in diverting cases on the day of trial from actually appearing before a judge for decision. This is critical because it will ease the need for additional assignment of judges to try small claims cases.

SENATOR LAUTENBERG:
2b. Will mediation of small claims cases (one of the options under Multi-Door Dispute Resolution program) significantly reduce filings in small claims court?

CHIEF JUDGE MOULTRIE
2b. As stated above, Multi-Door Dispute Resolution will not significantly reduce filings in Small Claims. The reasons basically are that small claims filings are inexpensive, can be handled without counsel without the party being placed at a serious disadvantage, are disposed of relatively fast and can still enter into mediation on the day of trial.

SENATOR LAUTENBERG:
2c. Are these potential reductions in caseload reflected in your request? They are not mentioned in the budget justification for the additional positions.

CHIEF JUDGE MOULTRIE:
2c. The Multi-Door Resolution Program is not expected to reduce small claims filing to any measurable degree. The request for additional Small Claims positions is based on the anticipated increase in filings due to the increase in jurisdiction.

SENATOR LAUTENBERG:
3a. You are requesting $105,000 for word processors for "five high volume operations ...". What are these high volume operations?

CHIEF JUDGE MOULTRIE:
3a. The five high volume operations which would be using these word processors are the Social Services, Family, Criminal, Civil and Probate Divisions.

SENATOR LAUTENBERG:
3b. Does the court have word processing capability now?

CHIEF JUDGE MOULTRIE:
3b. Yes, but only in a few select areas.

SENATOR LAUTENBERG:
3c. How many units do you intend to acquire?

CHIEF JUDGE MOULTRIE:
3c. We estimate that 20 word processing units could be purchased with this funding.

SENATOR LAUTENBERG:
3d. Would it be possible to add word processing capability to your data processing system? Wouldn't this be less costly?

CHIEF JUDGE MOULTRIE:
3d. The Superior Court's word processors are used today as "off line" systems and are not connected to our central data processing system. However, all units being purchased are to be compatible for use as terminals to our IBM 4341 main frame so that in our future plans they will be able to double as data entry and retrieval units as well as either stand-alone or shared logic word processors.

SUBCOMMITTEE RECESS

Senator SPECTER. The subcommittee will recess and reconvene at the call of the Chair.

[Whereupon, at 12:40 p.m., Thursday, June 20, the subcommittee was recessed, to reconvene subject to the call of the Chair.]

DISTRICT OF COLUMBIA APPROPRIATIONS FOR FISCAL YEAR 1986

TUESDAY, JULY 23, 1985

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:40 a.m., in room SD-138, Dirksen Senate Office Building, Hon. Arlen Specter (chairman) presiding.

Present: Senators Specter, Lautenberg, and Mattingly.

DISTRICT OF COLUMBIA

PUBLIC SCHOOLS

STATEMENT OF FLORETTA DUKES McKENZIE, SUPERINTENDENT

OPENING REMARKS

Senator SPECTER. The hearing of the District of Columbia Subcommittee of the Appropriations Committee will come to order.

I regret the delay in commencing this hearing, but I have been at a markup of Judiciary, which is in process now. And it may be necessary for me to return there for a vote. But we will proceed with this moment and complete it as promptly as we can.

We have a markup scheduled for today, and I am advised that Senator Lautenberg, who was here earlier, is in agreement with the recommendations which have been submitted and circulated, as are Senators Mattingly and Domenici. We will await action on that until we have finished the hearing, and perhaps others will arrive.

But I am advised that their acquiescence is sufficient for quorum purposes to move from the subcommittee to the full committee.

At this time I would like to call on R. David Hall, President of the D.C. Board of Education and Superintendent Floretta Dukes McKenzie, D.C. Public Schools. Step forward please.

Dr. McKENZIE. Thank you.

Senator SPECTER. Is Mr. Hall here?

Dr. McKENZIE. Mr. Hall had an emergency. He will not be able to join us.

Senator SPECTER. Thank you for joining us, Superintendent McKenzie. The inquiry at the moment is on the program which we have on truancy. The preliminary indicators are that the pilot program which has been put into effect has been working well, that there appears to be a significant drop in crime during the school hours which may well be attributable to the program which has been put into effect. And the subcommittee would like to have your evaluation of it.

The information made available to me shows that there has been a reduction in burglaries and larcenies citywide in the first police district during the hours of 8:30 a.m. to 4:30 p.m., and in March and April—the tracks run a little behind the citywide data, but in May there is a dramatic turnabout with a drop of some 22 percent, while citywide reduction was 8 percent.

Interestingly, the National Educational Association president, Ms. Mary Futrel, has commented nationwide that she is going to seek $1 in dues from each member of that organization for grants and programs to combat the dropouts. And I had an opportunity to meet with the NEA president, and may be offering some legislation which would direct our attention to this problem nationwide.

With that very brief introduction, Superintendent McKenzie, we look forward to your testimony.

STATEMENT OF FLORETTA DUKES MCKENZIE

Dr. McKENZIE. Thank you, Senator Specter.

My name is Floretta McKenzie, Superintendent of D.C. Public Schools. I am very pleased to be here to make some remarks concerning the subjects of attendance and dropout prevention.

Senator SPECTER. Superintendent McKenzie, we appreciate the full statement which you have submitted. It will be made without objection a part of the record.

Dr. McKENZIE. I do not intend to read that entire statement, just make a few comments, Senator.

Senator SPECTER. Good.

Dr. McKENZIE. I would like to indicate to you that we do recognize the very seriousness of the concern with respect to dropouts locally and nationally. And we believe that these issues have major implications for society. When a student is truanting or has dropped out of school we are not able to fulfill our mission.

We have employed a number of strategies to improve the attendance of the students in the D.C. schools. We expect to continue to make this a high priority area for the next school year. The president of the school board, Mr. R. David Hall, supports this focus.

We are pleased to announce that our attendance finally broke the 90-percent mark. This year we finally reached 90.1 percent in attendance. We have made some slight gains over the last 6 years, but we have stayed in the 80-percent range. And we believe that the fact that we have moved attendance to 90 percent this year while the average urban attendance rate is 85 percent is attributable to the support from this committee to the truancy prevention effort.

We have put into place automatic dialing machines, employed attendance counselors for our high schools, and opened a student attendance center that operates mostly for district 1.

We are pleased with the figures that our Metropolitan Police Department provided with respect to the lowering of criminal activity in district 1.

SPECIAL FUNDING FOR STUDENT ATTENDANCE CENTER

Senator SPECTER. Superintendent McKenzie, you say that the student attendance center, which was funded by a special authorization of this subcommittee last year, has been of help to you in dealing with the truancy program.

Dr. MCKENZIE. Indeed it has.

Senator SPECTER. Would you elaborate on what use you made of the funding which we provided to you last year.

Dr. MCKENZIE. We established an attendance center in the Northeast part of the city working with district 1 of the police department. We put into that center a director, social workers, attendance counselor, attendance aides, security aides, and a clerical staff. We receive students who have been truanting that are returned to us either by the police department or by our own efforts.

The attendance center opened on March 11, and we found that, as we looked at our records on June 14, we had processed 360 students through that center.

Senator SPECTER. Superintendent McKenzie, when you say you processed 360 students, are you saying that you returned some 360 students back to school?

Dr. MCKENZIE. Exactly, we returned them to their schools. If they were chronic truants, it could be recommended that we look at them through the center.

FUNDING APPROPRIATED FOR STUDENT ATTENDANCE CENTER

Senator SPECTER. Last year's appropriation was approximately $100,000?

Dr. MCKENZIE. No; last year's special appropriation for attendance improvement was about $1.2 million.

Senator SPECTER. I am advised that the $1 million appropriation included a number of other items.

Dr. MCKENZIE. Exactly.

Senator SPECTER. That the funding for the truancy center or the attendance center was approximately $100,000.

Dr. MCKENZIE. It is a little over that. The estimated cost is about $200,000.

Senator SPECTER. $200,000.

Dr. MCKENZIE. $200,000.

Senator SPECTER. The staff thinks that you may have used $100,000 of your own money?

Dr. McKenzie. We probably did. Because we added computer-assisted instruction to the center. When the students come in, we do not want them just sitting around. We want them to be working on improving their basic skills.

ADDITIONAL FUNDING IN FISCAL YEAR 1986 FOR ATTENDANCE CENTER

Senator Specter. What I am driving at, I would like to know how much money you put into it last year. We had anticipated $100,000 in extra funds, and this year we are proposing to put in $500,000 for the attendance center to expand the work of the attendance center.

And what this subcommittee has in mind with this initiative we believe, as you do, that attendance at school is obviously indispensable if students are going to be educated and is a vital link on job training and ability to have a job, to move ahead hopefully to college, or at least to vocational training, to have a job.

And also by attending school the students will not be engaging in burglaries or robberies or larcenies. They will stay out of the crime cycle. And if they complete their education, they will then be in a position to move ahead either in the educational process or hold a job.

Now, what this subcommittee would like to know—and the preliminary indicators are very positive on the number of people that you have moved through the attendance center. We would like to be able to gauge the success you have reached through this program and want to monitor what can be accomplished with the increase in appropriation.

We are dealing with model sums of money overall in our substantial terms, models considering the city's budget, school board's budget, and the Federal. But our goal here is to see if the success in the District of Columbia would warrant similar programs on a nationwide basis, treat Washington as a model city.

SUCCESS OF STUDENT ATTENDANCE CENTER

So the first question with that background is why do you think the program has been successful so far?

Dr. McKenzie. Well, we believe the program has been successful because we have not only treated attendance, but we have looked at some of the other causal factors. And that is why we have social workers to bring in other city agencies if there are family problems or individual student problems.

I think it also has been successful because we have tried to make the whole community aware of the importance of school attendance and can point to that center as a place where they can focus some of this interest.

Senator Specter. How many centers like that will you have, Superintendent McKenzie, with the additional funding in fiscal year 1986, if we are able to get this to the full committee, through the Senate, through the Congress, and signed by the President?

Dr. McKenzie. I think we would probably look forward to two or three more centers.

Senator SPECTER. Two or three more centers?

Dr. MCKENZIE. Yes; and I think that would make a very dramatic impact on our ability to keep up with our students and make sure that they are not on the streets.

INCREASE IN ATTENDANCE

Senator SPECTER. You say you increased attendance from something in the 85-percent range to more than 90 percent?

Dr. MCKENZIE. We are at 90 percent now.

Senator SPECTER. Would you be willing to give a professional judgment as to where you might be next year at this time if we get this full appropriation through?

Dr. MCKENZIE. We are going to set our target at 92 percent.

Senator SPECTER. Why not 95 percent? Why can we not go from 90 to 95 since you went from 85 to 90?

Dr. MCKENZIE. It took us a couple of years to make this change. But we will set the goal at 95. But to be realistic, and with the cooperation of students, we believe that we can realistically hit 92.

Senator SPECTER. Well, if your increased attendance went from 90 to 92 percent, how many students are represented by that increase in 2 percent attendance?

Dr. MCKENZIE. Between 1,500 and 2,000 students.

Senator SPECTER. Will affect as many as 2,000. And if you increased to 95, you would be affecting 5,000. I would say that is a good investment for the funding which we have involved here.

Dr. MCKENZIE. And we really want it to be a good investment, so we very carefully monitor our expenditures here. And we are putting into place an automated tracking system for students next year so that we can keep up with them and try to prevent dropouts.

Because when a student is chronically truanting, that is a precursor to dropping out of school. So the attendance improvement is very important to us.

ATTENDANCE CENTERS AND IMPACT ON CRIME

Senator SPECTER. What is your conclusion as to the impact on crime rate as a result of these truancy centers?

Dr. MCKENZIE. Well, we have been very concerned about the figures that have been given to us by Chief Turner and the police department about the number of juveniles engaged in crime during the hours of school. And we cannot help but share the opinion that if more are in school, then there is less opportunity for involvement in criminal activity.

Senator SPECTER. Is it your conclusion that the truancy center has been a causal factor in leading to the reduction of crime during the period of 8:30 to 4:30?

Dr. MCKENZIE. Since they are their figures, we cannot help but believe that there is a real connection there.

Senator Specter. You ~~may~~ proceed. Anything else you would like to say on the subject?

Dr. McKenzie. No; except that we have also looked at our junior high school population while we have isolated some characteristics of dropouts. We looked at four junior high schools and found about 150 students who are possibly potential dropouts.

So we will be working with that population to see if we can intervene early to prevent the dropout of students who are potentially through their attendance patterns, through the disruptive behavior, or their inability to succeed in schools, or the fact that other members of the family have dropped out. When we find students who have these characteristics, we want to work with them early enough to see if we can prevent them from being dropouts.

We are concerned because as we look at what is happening nationally and the need for higher levels of education on the part of all citizens. We believe that a dropout has a potential for becoming a part of a permanent underclass in this country. And so it is very important for us to attack this problem through improving the quality of our instructional programs, making them meaningful for students to want to stay, doing all of those things necessary to encourage and make school a place where students want to be, while on the other hand, having the kind of corrective processes through the attendance center, through constant attendance counseling.

We believe that we can significantly improve the school-going population retention rate, and also improve the quality of the education of students of this district.

COMPARISON OF TRUANCY CENTER AND REDUCTION IN CRIME

Senator Specter. Thank you very much, Superintendent McKenzie.

We have chief Maurice Turner with us on another subject. But, Chief Turner, if you would step forward at this moment and join Superintendent McKenzie and respond to a question or two on this subject at this point in our hearing.

The subcommittee would be very interested in your views as to the causal connection if any, as you see it, between the truancy center and the reduction in the crime figures which have been cited by your department.

Chief Turner. Thank you, Mr. Specter.

It is obvious to us in the Metropolitan Police Department that the truancy center has had some positive results on the reduction of crimes that have occurred in the target area, the target area being the first district. We have had some substantial reductions in the crimes, largely automobile larcenies and just regular larcenies. And we think we can attribute that directly to the enforcement of the truancy regulation.

In addition to the enforcement of the truancy regulations, the truancy center frees up the police officers' time. Heretofore when a police officer picks up a truant, he either carries him back to the precinct, to the school, or to his parents. Sometimes he is out of service on an average of 45 minutes per child. When he takes that individual to the truancy center, he drops them off immediately. They are taken over by school authorities, and they are followed through by the social workers. We have had some positive results in the reduction of crime.

POLICE SAVINGS RESULTING FROM ATTENDANCE CENTERS

Senator SPECTER. Chief Turner, would you be able to give me an approximation as to the dollar figure on saving police time as a result of the truancy center?

Chief TURNER. I can furnish it to this committee at a later time.

Senator SPECTER. I would be very interested to know that. Because it may be that by putting the money into the truancy center we are saving money on police time. And that is something which would be very significant in terms of an evaluation as to how cost effective the truancy center is from that one aspect alone.

Chief TURNER. Oftentimes an individual may be from one side of town and he is in the downtown area. Therefore you have got to transport him to far Southeast or far Northwest. And due to the truancy center, it is really time saving, as I said. It also reduces the amount of time that an officer is out of service. He is back in service on regular patrol function a lot sooner.

Senator SPECTER. I would be very interested to see the results on that. How long do you think it will take you to provide that figure to us?

Chief TURNER. We should have that for this committee by Friday of this week, sir.

Senator SPECTER. That will be very helpful if we have that information to present to the full committee, full Appropriations Committee. That would be very significant.

[The information follows:]

SAVINGS ATTRIBUTED TO D.C. PUBLIC SCHOOL TRUANCY CENTER

QUESTION:
1. How does the D. C. Public School Truancy Center save officers time; what is the dollar savings? Is there a savings on robberies, larcenies attributed to the Truancy Center?

ANSWER:
1. The Truancy Center has been in operation since March 18, 1985. During this period, the center has made an important contribution in reducing the time frequently consumed by police officers in picking-up truants, transporting them to school and placing them in the custody of school officials.

Prior to the D.C. Public Schools establishing the Truancy Center within the First Police District, each police officer spent on the average 45 to 50 minutes in the transportation and processing action of each truant. However, as a result of the Truancy Center, transport and processing time has been reduced by approximately 30 minutes. It now takes approximately 15 minutes for an officer to handle each truant administratively. This improved processing time has increased police on-street availability. Currently, within the First District, there are approximately 30-40 uniformed members available for the day tour of duty. The benefit of additional time augments officers' availability to respond to calls for service, to engage in routine patrol, and to devote more time to preventive patrol and other police services.

Dating from March 18, 1985, the Truancy Center's inception, approximately 318 truants were picked-up and transported to the center. It should be noted that out of this 318 truancy total, 146 students were picked-up who attended 41 schools located outside of the First District.

Considering the approximately 30 minutes of on-street duty time that was saved in processing each of the 318 truants, handled by police, through the center from March 18, 1985 to the closing of school on June 14, 1985 (a 42 day period), the department was able to realize a savings equalling $8,190.

The department projects that if the improved truancy-processing savings continue during the 1985-86 school year, it will produce a full school-year's savings of approximately $41,210. But we anticipate the real success of the Truancy Centers will be best measured by its important contribution in producing a continuing decline in the District of Columbia's truancy rate. This in turn will alleviate police from the task of picking-up truants.

These figures are based upon the following estimated calculations:

- Truancy Center opening March 18, 1985 and school closing June 14, 1985	42 days
- Time to transport and process a truant prior to inception of Truancy Center	45 minutes
- Number of uniformed officers involved in processing truancy within the First District	30
- Time to transport and process a truant after inception of Truancy Center	15 Minutes
- Time Save for each Truant processed due to Truancy Center	30 Minutes

- Average hourly pay rate of each uniformed officer processing truants $13.00
- Dollar savings to the Department based upon truancy processing rate of 15 minutes and 30 minutes saved due to Truancy Center .... $ 6.50

30 Officers
x30 Minutes processing truants
900 Minutes

60 minutes divided by 900 minutes = 15 manhours

30 minutes equates to a $6.50, one-half hour rate

$6.50 savings x 42 days duration between Center opening and school closing = $273.00

$273.00 x 30 officer assigned to street duty who spend a portion of time to handle truants = $8,190 savings.

At the present time, there is not enough information available to assess any savings to be derived from the Truancy Center in combating robberies and larcenies. The department will continue to analyze accumulated data for possible correlation.

LOCATION OF SCHOOL ATTENDANCE CENTER

Senator Specter. When we talk about figures in the first district, for the record, let us establish the correlation. The truancy center is in the first district, so the first district figures would obviously be affected by the presence of the truancy center; correct?

Chief Turner. That's correct.

Dr. McKenzie. Yes.

Senator Specter. And where is the truancy center located specifically.

Dr. McKenzie. That's about Fifth and E Streets NE.

Senator Specter. And what are the boundaries of the first district?

Chief Turner. First district runs from Florida Avenue south to the Anacostia River, from Massachussetts Avenue in the east to 14th Street NW.

Senator Specter. How many districts are there, Chief Turner?

Chief Turner. There are seven police districts.

Senator Specter. Then the first district takes approximately one-seventh of the city, or is it disproportionately larger or what?

Chief Turner. In size it is about the third largest district that we have.

Dr. McKenzie. It has a lot of commercial activity.

Chief Turner. It is the downtown business area, that attracts the youth. But in size it is about the third largest district.

Senator Specter. It would have a larger impact on the crime rate than other districts?

Chief Turner. It would.

Senator Specter. I would be interested if you could give us an approximation as to the saving and the dollar figures on robberies and burglaries and other crime which may be attributable to the truancy center.

Chief TURNER. We will certainly furnish that for this committee.

Senator SPECTER. That also would be very significant on an evaluation of cost effectiveness.

Chief TURNER. Yes, sir.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator SPECTER. OK. Thank you very much, Superintendent McKenzie. It is a pleasure to see you as always. And we look forward to working with you again next year on this important matter. We will insert your complete statement, along with questions submitted by Senator Lautenberg, in the record.

Dr. MCKENZIE. We appreciate your support.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF FLORETTA DUKES MCKENZIE

GOOD MORNING, SENATOR SPECTER AND MEMBERS OF THE SUBCOMMITTEE. FOR THE RECORD, I AM FLORETTA DUKES MCKENZIE, SUPERINTENDENT OF SCHOOLS AND CHIEF STATE SCHOOL OFFICER OF THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS. THANK YOU FOR THIS OPPORTUNITY TO TESTIFY ON THE SUBJECTS OF ATTENDANCE AND DROPOUT PREVENTION IN THE D. C. PUBLIC SCHOOL SYSTEM.

WHILE THE D. C. PUBLIC SCHOOLS HAS MADE SOME HEADWAY IN ADDRESSING THESE RELATED ISSUES, STUDENT TRUANCY AND SCHOOL DROPOUTS REMAIN AN AREA OF LOCAL CONCERN AS WELL AS A SERIOUS PROBLEM NATIONALLY.

NEEDLESS TO SAY, THE DUAL PROBLEMS OF TRUANCY AND DROPOUTS HOLD MAJOR IMPLICATIONS FOR ALL ASPECTS OF SOCIETY. OUR NATION'S EDUCATORS AND PARENTS ARE CONCERNED BECAUSE, OBVIOUSLY, IF THE STUDENTS ARE NOT IN SCHOOL, THE MISSION OF EDUCATION -- TEACHING AND LEARNING -- GOES UNFULFILLED. AND, OF COURSE, THIS THEN OFTEN REVERBERATES INTO THE CRIMINAL JUSTICE SYSTEM, STRAINS ALL GOVERNMENT SERVICES AND, MOST CRITICALLY, FORESHORTENS THE PERSONAL POTENTIAL OF FAR TOO MANY YOUNG LIVES. IF WE FAIL TO ADDRESS THESE ISSUES, AS A NATION, WE RUN THE RISK OF CREATING A PERMANENT UNDERCLASS AMONG OUR POPULATION.

GIVEN THE SERIOUSNESS OF THESE ISSUES, I WOULD LIKE TO BRIEFLY SHARE WITH YOU TODAY SOME OF THE STRATEGIES WE IN THE D. C. SCHOOLS ARE EMPLOYING TO INCREASE SCHOOL ATTENDANCE AND REDUCE THE NUMBER OF DROPOUTS. I WILL HIGHLIGHT THE AREAS IN WHICH WE ARE MEETING WITH SOME SUBSTANTIVE SUCCESS AS WELL AS PINPOINT OUR PLANS FOR CONTINUING OUR EFFORTS IN THESE ARENAS AND, FINALLY, CLARIFY SOME RECENT MEDIA REPORTS ON THESE SUBJECTS.

IN RECENT YEARS, THE DAILY STUDENT ATTENDANCE RATE HAS INCREASED AT ALL GRADE LEVELS. (A CHART DEPICTING ATTENDANCE RATES SINCE 1979 IS ATTACHED.) THIS PAST SCHOOL YEAR, 1984 - 85, THE SYSTEMWIDE ATTENDANCE RATE WAS 90.1%, AN INCREASE OF 1.4% OVER THE PREVIOUS YEAR. OUR TARGET FOR LAST SCHOOL YEAR WAS 90% AND WE ARE VERY PLEASED TO HAVE MET THIS GOAL.

THE DECREASING ABSENTEE RATE IN THE D. C. PUBLIC SCHOOLS HAS COME AS A RESULT OF A CONCENTRATED EFFORT AT INCREASING SCHOOL ATTENDANCE -- AN EFFORT THAT CONTINUES AT THE PRESENT TIME AND WILL ESCALATE DURING THE 1985-1986 SCHOOL YEAR. THIS COMMITTEE'S SUPPORT AS PART OF OUR FY 1985 BUDGET HAS CONTRIBUTED MEASURABLY TO OUR EFFORTS. AT PRESENT, AUTOMATIC DIALING MACHINES ARE BEING USED TO CONTACT THE PARENTS OF STUDENTS WHO HAVE EVEN ONE UNEXCUSED ABSENCE. IN ADDITION, 19 ATTENDANCE OFFICERS ARE EMPLOYED TO DEAL WITH CHRONICALLY ABSENT SENIOR HIGH SCHOOL STUDENTS, AS WELL AS THOSE JUNIOR HIGH AND ELEMENTARY STUDENTS CLEARLY IN NEED OF COUNSELING. MORE SPECIFICALLY, AN ATTENDANCE AIDE AND ATTENDANCE OFFICER SERVE EACH SENIOR HIGH SCHOOL AND ALSO JUNIOR HIGH AND ELEMENTARY SCHOOLS, ON A NEED BASIS.

FURTHERMORE, SINCE MARCH 11, 1985, A STUDENT ATTENDANCE SERVICE CENTER HAS BEEN IN OPERATION. THIS CENTER, WHICH EMPLOYS A DIRECTOR, 5 ATTENDANCE SOCIAL WORKERS, 2 ATTENDANCE COUNSELORS, 2 ATTENDANCE AIDES, 2 SECURITY AIDES, AND 2 CLERICAL STAFF, PROVIDES ATTENDANCE COUNSELING, SOCIAL WORK SERVICES AND THE USE OF COMPUTER-ASSISTED INSTRUCTION TO CHRONICALLY TRUANT STUDENTS. STUDENTS, REFERRED BY EITHER THE METROPOLITAN POLICE DEPARTMENT, SCHOOLS, OR THEMSELVES, ARE SCHEDULED FOR WEEKLY FULL-DAY SESSIONS FOR 6-8 WEEKS. FOLLOW-UP WORK IS THEN DONE ON ALL OF THESE STUDENTS. AS OF JUNE 14, 1985, 360 STUDENTS HAD BEEN PROCESSED THROUGH THE CENTER -- 279 REFERRED BY THE METROPOLITAN POLICE, 75 BY THE SCHOOL SYSTEM, AND 6 BROUGHT IN THROUGH SELF-REFERRALS.

BASED ON ITS INITIAL THREE MONTHS OF OPERATION, THE ATTENDANCE CENTER IS PROVIDING SOME MUCH-NEEDED, CONCENTRATED SERVICES TO STUDENTS. GIVEN THIS, I BELIEVE THE ATTENDANCE CENTER CONCEPT HAS THE POTENTIAL OF MAKING SIGNIFICANT PROGRESS IN ASSISTING THE CHRONIC TRUANT TO MEET WITH EDUCATIONAL SUCCESS. THUS, THE SCHOOL SYSTEM MAY NEED TO EXPAND THE ATTENDANCE CENTER CONCEPT TO SERVE STUDENTS IN OTHER AREAS OF THE CITY.

IN ADDITION TO CONTINUING THE EFFORTS LAUNCHED THIS SCHOOL YEAR, WE WILL BE TAKING SOME NEW DIRECTIONS IN 1985-86. FOR INSTANCE, THE SCHOOL SYSTEM WILL UNDERTAKE A MAJOR AWARENESS CAMPAIGN TO INFORM STUDENTS, PARENTS, STAFF AND THE COMMUNITY OF THE NATURE, OBJECTIVES AND CONSEQUENCES OF OUR ATTENDANCE POLICIES AND PROGRAM. ALL LEVELS OF THE SCHOOL SYSTEM ARE INVOLVED IN THE PLANNING AND IMPLEMENTATION OF A VARIETY OF ATTENDANCE-RELATED ACTIVITIES.

ALSO PLANNED FOR THE 1985-1986 SCHOOL YEAR IS INCREASED ATTENDANCE ACCOUNTABILITY THROUGH A PLAN FOR AUTOMATING ATTENDANCE ACCOUNTING. THIS PROGRAM WILL PROVIDE LOCAL SCHOOLS WITH THE CAPABILITY OF UTILIZING MICRO-COMPUTERS TO RECORD DAILY ATTENDANCE AND PROVIDE INDIVIDUAL AND SUMMARY REPORTS. THE PLAN WILL BE IMPLEMENTED IN THE HIGH SCHOOLS BY THE END OF THE FIRST SEMESTER OF THE 1985-1986 SCHOOL YEAR, IN JUNIOR HIGH SCHOOLS BY THE END OF THE SECOND SEMESTER OF THE NEXT SCHOOL YEAR, AND IN ELEMENTARY SCHOOLS BY THE END OF THE FIRST SEMESTER OF THE 1986-1987 SCHOOL YEAR.

THE SCHOOL SYSTEM'S EFFORTS TO INCREASE STUDENT ATTENDANCE ARE DIRECTLY RELATED TO OUR ACTIVITIES TO PREVENT STUDENTS FROM DROPPING OUT OF SCHOOL. OF COURSE, CHRONIC TRUANCY IS AN "EARLY WARNING SIGNAL" OF THE POTENTIAL DROPOUT.

OTHER CHARACTERISTICS OF THE POTENTIAL DROPOUT MAY INCLUDE SOME OR ALL OF THE FOLLOWING:

- LACK OF BASIC SKILLS AND LOW TEST SCORES IN MATH AND READING;
- SIBLINGS OR PARENTS WHO WERE DROPOUTS;
- POOR SOCIAL ADJUSTMENTS, DISRUPTIVE AND REBELLIOUS BEHAVIOR;
- INVOLVEMENT WITH THE JUVENILE JUSTICE SYSTEM AND THE COURTS;
- LOW SELF-CONCEPT AND SELF-ESTEEM;
- EXCESSIVELY STRESSFUL FAMILY LIFE;
- IMMATURITY, EASILY DISTRACTED, LACKING A FUTURE ORIENTATION;
- INABILITY TO TOLERATE STRUCTURED ACTIVITIES;
- HIGHER RATE OF MOBILITY THAN OTHER STUDENTS;
- LIMITED EXTRA-CURRICULAR PARTICIPATION; LACK OF IDENTIFICATION WITH SCHOOL AND EXPRESSED FEELINGS OF NOT BELONGING;
- TEENAGE PREGNANCY AND PARENTING.

IN OUR SCHOOL DISTRICT, WE RECENTLY APPLIED THESE CHARACTERISTICS TO THE POPULATIONS AT FOUR JUNIOR HIGH SCHOOLS. WE IDENTIFIED 150 STUDENTS WHO EXHIBITED FOUR OR MORE OF THESE TRAITS.

THE EARLY IDENTIFICATION OF STUDENTS EXHIBITING THE CHARACTERISTICS OF POTENTIAL DROPOUTS ENABLES OUR EDUCATORS TO INTERCEDE WITH CORRECTIVE STRATEGIES. THE "AT RISK" STUDENTS IDENTIFIED AT THESE FOUR SCHOOLS WILL BE MONITORED AND RECEIVING ADDITIONAL ASSISTANCE IN THE COMING YEAR.

ADDITIONALLY, IF SCHOOLS ACROSS THE NATION ARE TO EFFECTIVELY REDUCE THE NUMBER OF STUDENT DROPOUTS, THEY MUST ENSURE THAT THEIR EDUCATIONAL PROGRAMS ARE SUFFICIENTLY ENGAGING, STIMULATING AND ENCOURAGING TO STUDENTS. STUDENTS NEED COURSES OF STUDIES WHICH ARE CLEARLY MEANINGFUL TO THEIR

PRESENT AND FUTURE LIVES. IN THE DISTRICT OF COLUMBIA, WE HAVE LAUNCHED A SECONDARY SCHOOL IMPROVEMENT INITIATIVE AIMED AT IMPROVING STUDENT SUCCESS IN ALL AREAS. AFTER ASSESSING THE STRENGTHS AND SHORTCOMINGS OF THEIR SCHOOL, LOCAL TEAMS OF EDUCATORS HAVE DEVELOPED PLANS FOR THE COMING SCHOOL YEAR TO INCREASE A RANGE OF INDICATORS OF STUDENT SUCCESS INCLUDING ACADEMIC ACHIEVEMENT, PARENTAL INVOLVEMENT, ATTENDANCE, POST-GRADUATION PLANS, AND CO-CURRICULAR ACTIVITIES PROGRAMS.

THE TASK OF ASSESSING THE ACTUAL NUMBER OF SCHOOL DROPOUTS HAS BEEN AND CONTINUES TO BE A DIFFICULT ISSUE NATIONWIDE. DEFINITIONS OF "DROPOUTS" ARE ALMOST AS DIVERSE AS THE COUNTRY'S SCHOOL DISTRICTS THEMSELVES. THERE ARE ALSO A VARIETY OF DISPARATE METHODS OF CALCULATING THE RATES OF DROPOUTS. ONE OF THE PROBLEMS WHICH OFTEN ARISES IS THAT THE DIFFERENT CALCULATION METHODS DO NOT TAKE INTO CONSIDERATION THE MANY FACTORS THAT AFFECT THE DROPOUT RATE.

FOR INSTANCE, WHEN THE U. S. DEPARTMENT OF EDUCATION RECENTLY REPORTED THAT THE DROPOUT RATE FOR DISTRICT OF COLUMBIA SECONDARY STUDENTS EXCEEDED 40%, THE SCHOOL SYSTEM CHALLENGED THE DATA AND THE METHODOLOGY. THE ASSUMPTION HERE WAS THAT ALL STUDENTS IN THE NINTH GRADE WHO DO NOT GRADUATE FOUR YEARS LATER ARE DROPOUTS.

SIMPLE SUBTRACTION OF NUMBERS OF STUDENTS ENROLLED AT DIFFERENT GRADE LEVELS FROM ONE YEAR TO THE NEXT DOES NOT GIVE AN ACCURATE NUMBER OF DROPOUTS. THIS CALCULATION METHOD DOES NOT TAKE INTO ACCOUNT THE SUBSTANTIAL MOVEMENT OF PEOPLE IN AND OUT OF THE DISTRICT OF COLUMBIA. FOR EXAMPLE, FROM 1978 TO 1982, THE DISTRICT OF COLUMBIA POPULATION DECLINED BY 47,000 PEOPLE. OF THIS NUMBER, A TOTAL OF 9,200 WERE BETWEEN THE AGES OF 14 AND 21.

IN OTHER LARGE CITIES, THE TRANSFER OF STUDENTS FROM ONE SCHOOL SYSTEM TO ANOTHER WITHIN THE STATE WOULD HAVE NO EFFECT ON THEIR DROPOUT STATISTICS. IN THE DISTRICT OF COLUMBIA, HOWEVER, THE TRANSFER OF A STUDENT TO A SURROUNDING JURISDICTION IS SHOWN AS A LOSS AND WOULD BE INACCURATELY CHARACTERIZED AS A DROPOUT UNDER THIS FORMULA.

THE DEPARTMENT OF EDUCATION FIGURES ALSO ARE MISLEADING IN THAT THE DISTRICT'S DROPOUT RATE IS COMPARED TO THOSE OF THE FIFTY STATES. THUS, THE DISTRICT OF COLUMBIA, AN ENTIRELY URBAN POPULATION, IS COMPARED WITH STATES WHOSE URBAN FIGURES ARE AVERAGED IN THE DROPOUT RATES FOR THE ENTIRE STATE.

ANOTHER MEDIA REPORT INDICATED THE DROPOUT RATE WAS 32%. THIS FIGURE WAS BASED ON A HYPOTHETICAL COMPUTATION WHICH EMPLOYED AN UNREALISTICALLY LOW CALCULATION OF OUT-MIGRATION, BASED ON THE PERCENTAGE OF MOVEMENT OF THE DISTRICT OF COLUMBIA POPULATION AS A WHOLE, RATHER THAN THE ACTUAL NUMBERS OF SECONDARY SCHOOL-AGE CHILDREN LEAVING THE DISTRICT OVER A SPECIFIED TIME PERIOD.

THE SCHOOL SYSTEM'S CALCULATIONS INDICATE A DROPOUT RATE OF 16.97%. THIS RATE WAS CALCULATED BY USING A COHORT ANALYSIS. THE ENROLLMENT OF TENTH GRADERS IN A GIVEN YEAR IS COMPARED WITH THE NUMBER OF HIGH SCHOOL GRADUATES THREE YEARS LATER. THE DIFFERENCE BETWEEN THESE FIGURES IS DEFINED AS THE RATE OF ATTRITION WHICH IS THEN ADJUSTED FOR MIGRATION USING THE CENSUS DATA FROM THE DISTRICT OF COLUMBIA GOVERNMENT'S OFFICE OF PLANNING AND DEVELOPMENT. (THE CENSUS DATA IS ADJUSTED TO REFLECT ONLY HIGH SCHOOL-AGED STUDENTS AND A PARTICULAR THREE-YEAR TIME SPAN.)

THE SCHOOL SYSTEM IS NOW IN THE PROCESS OF AUTOMATING THE STUDENT ENROLLMENT SYSTEM WHICH WILL ENABLE US TO

INDIVIDUALLY TRACK STUDENTS THROUGH THEIR SCHOOL CAREERS AND, THUS, ELIMINATE THE NEED TO USE THE STATISTICAL METHOD FOR CALCULATING DROPOUT RATES. THE INDIVIDUAL TRACKING OF STUDENTS WILL PRODUCE A MUCH MORE ACCURATE ACCOUNT OF STUDENTS ENTERING AND LEAVING SCHOOL AND THE VARIOUS REASONS FOR SUCH STUDENT MOVEMENTS.

I WOULD BE PLEASED TO RESPOND TO ANY QUESTIONS YOU MIGHT HAVE.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

RATES OF ATTENDANCE

SCHOOL YEAR	ELEMENTARY	JUNIOR HIGH	SENIOR HIGH	SYSTEMWIDE
1979-80	91.8%	84.7%	78.4%	87.0%
1980-81	91.9%	84.3%	77.8%	86.9%
1981-82	91.9%	84.6%	80.7%	87.4%
1982-83	92.2%	85.7%	81.1%	88.2%
1983-84	91.8%	86.8%	83.3%	88.7%
1984-85	92.6%	88.2%	84.7%	90.1%

QUESTIONS SUBMITTED BY SENATOR LAUTENBERG

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

GENERAL BUDGET

SENATOR LAUTENBERG:
1. The Council reduced the Board's request for the Teacher Incentive Program from $1.665 million to $1 million. What is the impact of this $665,000 reduction?

DR. MCKENZIE:
1. The original budget request for FY 1986 for the Teacher Incentive Program was $1.665 million. The final budget level for FY 1986 will amount to $1.635 million, or a net reduction of $30,000. This reduction occurs because the FY 1986 budget increase of $1.0 million was treated as an addition to the FY 1985 special funding for this program of $635,000. The combination of the FY 1986 increase of $1.0 million and the base adjustment of the FY 1985 special allocation results in a total budget for FY 1986 of $1.635 million, a $30,000 shortfall from the original request. Hence, the FY 1986 program offerings for the Teacher Incentive Program will not have to change as a result of the final funding allocated to this program.

SENATOR LAUTENBERG:
2. The Board's original request for school safety improvements was $1.941 million. The request in the budget is $1 million. What other improvements did you have planned?

DR. MCKENZIE:
2. The budget category: school safety improvements include funds for those services in FY 1986 that would be directed towards the improvement of the safety conditions for students and school system employees. This area includes such services as funds for staff to assist with the ongoing monitoring of asbestos compliance; locker replacements and repairs for safety of student property; and, security for computer laboratories. The final funding level to be allocated for this service in FY 1986 amounts to $1.341 million, a reduction of $600,000 from the original budget request. The $1.341 million in funds are displayed in the FY 1986 Budget under the two responsible offices, the Division of Safety and Security and the Division of Buildings and Grounds. The reduction of $600,000 represents a transfer of that portion of the original budget request for asbestos abatement equipment to the FY 1985 Supplemental Capital Budget Request for asbestos abatement. This supplemental request was prepared after the completion of the original FY 1986 Budget Request. Since the need for the equipment was immediate, it was dropped from the FY 1986 Operating Budget and transferred to the FY 1985 Supplemental Budget Request.

COMPUTER EDUCATION

SENATOR LAUTENBERG:
1. I note that your budget contains several items related to computer education. You are requesting an increase of 5 positions and $159,000 for computer assistance remediation teachers in the Office of the Deputy Superintendent. At the same time, you propose transferring 30 positions and $1.863 million from the Deputy

Superintendent's Office to the Office of Educational Technology. In addition, you are increasing the funding for the Write to Read Program by $5,000.

Could you give us an overview of the major elements of your computer education program and tell us how these items fit into your overall plan?

DR. MCKENZIE:
1. The Computer Education Program for the District of Columbia Public Schools has a three-prong approach which is reflected by the following areas of focus:

- Computer literacy skill development for school system employees and students;
- Computer-related instructional support for students receiving the regular instructional program and for those students with specialized instructional needs; and,
- Integration of career applications of computers into vocational training programs.

The changes in support for computer education described in the FY 1986 Budget Request are all designed to enhance the program offerings in computer-related instruction in the regular classroom. The increase of five computer assisted instruction positions will provide additional staff for remediation at the junior high school level. Similarly, the increase of $5,000 to the Write to Read Program will fund instructional supplies and materials needed to support the expansion of this program in elementary schools. Finally, the transfer of the 30 computer assisted instruction position from the Office of the Deputy Superintendent to the Division of Educational Technology represents a realignment of existing resources to place the instructional staff for the computer labs under the administrative auspices of the Educational Technology Program. These three changes reflect increases in resources and administrative realignments to support the use of computer as an instructional tool.

SENATOR LAUTENBERG:
2A. I have a recent article describing the achievement of your Write to Read Program. Computer assisted instruction apparently works.

Of the total student population, what proportions has access to computer assisted education?

DR. MCKENZIE:
2A. While it is difficult to quantify the percentage of the student population with access to computer assisted instruction, allow me to share with you information on the type and extent of computer assisted instruction services available to ensure that all District of Columbia Public School students become computer literate. This information is summarized as follows:

- Each elementary, junior, and senior high school has a computer laboratory.

- Free summer computer camps are offered for students and parents.
- Free computer lending libraries exist for students and their parents in Chapter 1 programs. This lending program provides students with the opportunity to borrow a computer for use in their homes.
- The IBM Model School Computer Laboratories are established in four junior high schools located in economically deprived areas.
- The Xerox 820-II Computer Laboratory has been established at Anacostia Senior High School. This laboratory was donated through a grant by the National Urban League and Xerox Corporation.
- The IBM Writing to Read Program is based in 15 elementary schools throughout the city. Plans have been made to expand the program to 12 more elementary schools.

SENATOR LAUTENBERG:
2B. The 5 additional positions ($159,000) you request for computer assisted education are for remediation programs, primarily at the secondary level. Is the primary focus of your computer assisted education remediation?

DR. MCKENZIE:
2B. No, the instructional focus of the computer assisted instruction for the District of Columbia Public Schools is more comprehensive than a single focus on remedial education. This program is designed to develop basic computer literacy skills in all students To accomplish this goal, the program is used to enhance the regular instructional program by integrating computer education into the school system's competency based curriculum. Further, computers are used to promote academic challenges for advanced learners and to provide tutorial assistance for students requiring remediation. This tool is also utilized for preparing students for the GED, the SAT and for basic skill development. Some of these latter components are used not only for the regular student population, but is used by the adult education and bilingual education students populations as well.

SENATOR LAUTENBERG:
3. Your budget documents mention a five year computer literacy plan. My information is that, so far, this effort has been aimed principally at administrators and teachers. To what extent are students going to be involved?

DR. MCKENZIE:
3. The Five Year Computer Literacy Plan is a guide for developing computer literacy skills in both the student population and employees of the District of Columbia Public Schools. In addition to the successful efforts that have been implemented to train teachers, administrators, and other school system employees, program accomplishments have also been achieved in regard to instruction support for students. These efforts have resulted in the establishment of computer laboratories in all elementary and secondary schools, summer computer camps for students and parents, computer lending libraries for Chapter 1 students and parents, and many public-private partnership programs in computer education.

DEPARTMENT OF EMPLOYMENT SERVICES

STATEMENTS OF:

CURTIS McCLINTON, DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT

MATTHEW F. SHANNON, DIRECTOR, DEPARTMENT OF EMPLOYMENT SERVICES

INTRODUCTION OF WITNESS

Senator SPECTER. You may stay there, Chief. We are going to hear in sequence now on the job training issue from Deputy Mayor Curtis McClinton, Deputy Mayor of Economic Development. If you would step forward, we appreciate your being with us.

In line with the subcommittee's interest on truancy, education, and job placement, prison reform, et cetera, we have been working on this subject, as you know, with the D.C. officials. And we would be very interested in your evaluation as to what might be accomplished with the proposed funding for job training.

As you know, we are considering after discussions with your department an allocation of some $500,000 on this line and we would be very interested to know what your plans are, what you think could be accomplished with this appropriation.

STATEMENT OF CURTIS MCCLINTON

Mr. McCLINTON. Mr. Chairman, thank you very much.

The involvement and consideration by yourself personally and of course your committee has been very instrumental in our overall job training efforts in the District of Columbia.

As you know, the Mayor's focus as the No. 1 objective in economic development is jobs, jobs, jobs. With that, and of course the enhanced capability of the city now with the industrial revenue bond authority, also our loan guarantee capacities, our entire efforts have been to pull together the entire economic development cluster which represents some seven agencies under the Mayor to focus on job creation and the expansion of goods and services.

I think specifically the $500,000 you are speaking to is a very critical area and very critical need from the standpoint of linking that with our job expansion and specifically in the area of linking it with our public housing.

We have, as you know, some 60,000 residents in our public housing, and we have a budget there of probably about $158 million for refurbishing those units. There is a critical need and demand for skills and individuals who are able to carry out the crafts and the workmanship and bring those units on. Our Department of Housing and Department of Employment Services have entered into an apprenticeship program and have had some discussions with the unions in bringing these individuals in that area.

Also, all the expansion in the downtown area, major industry such as the institutions, the hotels, and other businesses have signed a first-source agreement, that is 50 percent or more of the jobs that are created low entry level jobs in those institutions have to come from D.C. residents.

But one of the problems we are dealing with right now is the facts, and that is the fact of some 25,000 or more individuals who are unemployed in the District, some 8 percent. We have a high base of structural unemployment, which represents some 68 percent of those individuals. This is an area that we feel is very critical in focusing on enhanced training both with the Department of Education and Dr. McKenzie, who I would like to say has worked very closely in the private enterprise sector with the career development program.

We have found that the small business and minority business program under our minority set-aside has been a substantial area for jobs. Having expanded, some 60 percent of the new jobs that have been created fall into that category with the small businesses in that area.

We feel in order to have a more substantial, cohesive neighborhood, a broader support of goods and services in our neighborhood, we want a stable housing infrastructure of ownership that is critical, that that 68 percent of the individuals who are unemployed are reached, that they have opportunities——

RATE OF UNEMPLOYMENT

Senator SPECTER. You say 68 percent unemployed?

Mr. MCCLINTON. No, Senator, 8 percent unemployed.

Senator SPECTER. Would you repeat those statistics please. You lost me.

Mr. MCCLINTON. We have in the District an 8-percent unemployment rate.

Senator SPECTER. Do you think that is an accurate figure?

Mr. MCCLINTON. Well, it is the best information we have available to us.

Senator SPECTER. OK. Eight percent unemployed.

NUMBER OF STRUCTURALLY UNEMPLOYED

Mr. MCCLINTON. I am saying, of that 8 percent the aggregate total numerically is 25,600. And 68 percent of that 25,600 falls into the category of structurally unemployed.

Senator SPECTER. What percentage again structurally unemployed?

Mr. MCCLINTON. 68 percent.

Senator SPECTER. If you have an 8 percent unemployment rate, and that constitutes 25,600, that only presupposes a total population of about 300,000. That is your figure, 300,000 people who are in the job market?

Mr. McClinton. That is a base. I mean that is basic.

CIVILIAN WORK FORCE

Senator Specter. Are there not more than 300,000 in the job market?

Mr. Shannon. Senator Specter——

Senator Specter. Can you identify yourself.

Mr. Shannon. Matthew Shannon, Director of Employment Services for the city.

In terms of the statistical configuration with which we deal according to our BLS structure, we have a civilian work force, according to their definition of 321,500 persons. And the 25,000 figure which was quoted represents the unemployment rate based upon that civilian work force.

Senator Specter. Your statistical configuration gives you a 321,500 civilian work force.

Mr. Shannon. That is correct.

Senator Specter. Sounds low to me.

Mr. Shannon. I didn't hear your question, Senator.

POPULATION OF DISTRICT

Senator Specter. What is the population of the District of Columbia?

Mr. Shannon. 600,000, a little better than 600,000.

Senator Specter. It sounds low. But if you say so——

Mr. Shannon. Well, we believe certainly that the BLS statistical configuration undercounts the problem. I think the problem certainly is much more pervasive.

Senator Specter. What is the problem? That is what I am trying to find out.

Mr. Shannon. Well, in terms of the context of the discussion, Senator, we are concerned with the $500,000 that you are recommending be appropriated, that we look at those persons that the school system, has really graduated out either by their own choice or through the system, indeed those who have dropped out, we need to design programs that provide, a basic education component, day care component, counseling component to assist with job retention.

COMPARISON OF CIVILIAN WORK FORCE TO TOTAL POPULATION

Senator Specter. I am trying to come to grips with some of the basic figures. Do you think that it is realistic that the work force is limited to 321,000 people in the District of Columbia?

Mr. Shannon. It is a realistic work force, sir, in terms of the population of the District of Columbia.

Senator Specter. That is a real figure, an accurate figure in your professional judgment?

Mr. Shannon. I believe it is an accurate work force figure.

Senator Specter. And you think that the figure then of 25,600 is an accurate figure on unemployment in the city? Because it sounds low to me.

Mr. SHANNON. On those that are counted in terms of the BLS figures, yes.

NUMBER OF UNCOUNTED UNEMPLOYED PERSONS

Senator SPECTER. That raises the obvious question about those that are uncounted?

Mr. SHANNON. Those that are uncounted——

Senator SPECTER. Have you counted the uncounted?

Mr. SHANNON. We have attempted, sir, to count them.

Senator SPECTER. What count do you get?

Mr. SHANNON. We would have to go back and look at the various counts that we have. But we certainly think that you are talking about an additional 5,000 persons who are discouraged workers who the BLS statistical configuration would not reach.

Senator SPECTER. Maybe even more than 5,000? The 5,000 figure would just increase the unemployment rate to 10 percent?

Mr. SHANNON. We think 5,000 is a significant figure.

Senator SPECTER. I think it is too. I am just probing as to whether it is an accurate figure.

Mr. SHANNON. We think it is accurate, sir.

Senator SPECTER. OK. Let's go back to the figures that you are working with, Deputy Mayor McClinton. The 68-percent figure, if you pick up at that point, I would appreciate it so I can follow the scope of the problems we are trying to attack here.

Mr. MCCLINTON. Well, I think to put it in perspective, there are many other cities such as Reading, PA, Youngstown, OH, and New Orleans, that have similar figures as a base, which range from 65 to 75 percent.

Senator SPECTER. What does the 68-percent figure represent again?

Mr. MCCLINTON. Structural unemployment.

DEFINITION OF STRUCTURAL UNEMPLOYMENT

Senator SPECTER. And that is 68 percent of the 8 percent, so that is how you find about 17,000 of the structurally unemployed. If you would define for me what structural unemployment is I would appreciate it.

Mr. SHANNON. Structural unemployment is the unemployment problem that is left after you take out cyclical unemployment which is created by the various seasonal types of work, and the frictional unemployment, leaving persons whose skills do not match employers' job requirements.

Senator SPECTER. Frictional unemployment, is that what you said?

THREE TYPES OF UNEMPLOYMENT CATEGORIES

Mr. SHANNON. There are three theories which define unemployment. One is your structural unemployment problem, a problem that will always be with you. The second is the frictional unemployment which is created by ebbs and flows in good times and bad times in terms of an economy.

Senator SPECTER. So how does frictional differ with cyclical?

Mr. SHANNON. Your cyclical is the unemployment problem that we can predict as your cycles of the year move in terms of seasonal work, in terms of construction.

Senator SPECTER. Frictional is ebb and flow, and cyclical is seasonal?

Mr. SHANNON. That is correct. Now, your frictional unemployment problem we believe has been carved away with the positive effects of the economy turning around and the recessionary effects of the economy—or the effects that the recession had on the economy being reduced.

Senator SPECTER. So when you say frictional, it is the ebb and flow of the economy as opposed to the seasons.

Mr. SHANNON. Right.

Senator SPECTER. OK. What you are trying to do is structural equals total unemployment minus cyclical and frictional.

Mr. SHANNON. Correct.

DEVELOPMENT OF PROGRAM WITH ADDITIONAL FUNDING

Senator SPECTER. You have about 17 percent that are structurally unemployed. And that is the group that this program is going to be directed toward?

Mr. MCCLINTON. Correct.

Senator SPECTER. And how are you going to operate it?

Mr. MCCLINTON. We think it is very critical in working with what we said, with job opportunties and our strengthening them. We spoke to the issue of public housing and in the construction crafts where we have a market among ourselves.

But work experience is very important. Remedial education, day care services, and counseling are very critical in those particular areas. Working with the private sector is very critical.

We had found the small business community and the business community in most instances to be very responsible, especially through summer job youth programs. Also as the summer ends, there are those individuals who need to be retained in the job market. We feel that we need to focus on actual work opportunties that exist and are expanding.

Senator SPECTER. I do not really follow that, Deputy Mayor McClinton. What are you going to do specifically? What programs do you have in mind in a concrete way that you will be using this money for?

EXPANSION OF OUT-OF-SCHOOL PROGRAM

Mr. SHANNON. Senator, what we propose is to expand our out-of-school program, which is already operational in the city. The out-of-school program is designed to serve persons who have dropped out of high school and out of college, put them in a work experience where we would subsidize the wages for 1 year of eligibility, and have in that program also a basic education component which we can contract with the public school system to provide for at least 1 day a week——

Senator SPECTER. What funding is currently available for your out-of-school program?

Mr. SHANNON. $1.8 million.

Senator SPECTER. And you use the current funding for——

Mr. SHANNON. I am sorry, sir. I stand corrected. It is $2,051,000.

Senator SPECTER. And you use that money to provide supplements for wages while these people are in job training; is that what you are saying?

Mr. SHANNON. That is correct. The major portion of those dollars are used for work experience wages.

Senator SPECTER. Work experience wages.

Mr. SHANNON. That is correct.

Senator SPECTER. And how many people are covered by that program?

Mr. SHANNON. 525 in 1985.

Senator SPECTER. 525.

Mr. SHANNON. That is correct, in 1985.

Senator SPECTER. What does that cost per person?

Mr. SHANNON. I would have to do the calculation for you, Senator, and get back to you.

Senator SPECTER. That is $4,000 a person. How successful are you with that program?

Mr. SHANNON. We believe we are very successful. Because the persons coming out of the program, who go into it without a GED or a high school diploma, receive a GED as a result of the training. We have succeeded in giving an opportunity to provide work experience and having something on a resume or a 171 and going into an employer both in the private sector and public sector agencies.

TIE IN TO JOB TRAINING PARTNERSHIP ACT

Senator SPECTER. How do you tie in, if at all, to the Job Training Partnership Act?

Mr. SHANNON. It is a complementary program actually. The Job Training Partnership Act, as you know, limits the amount of money that can be paid for work experience. In this community we need——

Senator SPECTER. What is the limit on the Job Training Partnership Act?

Mr. SHANNON. You can only provide a stipend of $30 per week in the Job Training Partnership Act programs. Whereas in this program we can provide funding at 40 hours a week, $3.35 an hour, which is the Federal minimum wage.

Senator SPECTER. 40 hours a week, $3.35, so we are talking about a stipend of somewhere in the neighborhood of $140?

Mr. SHANNON. That is correct.

Senator SPECTER. One of the problems I hear about is displaced workers who are going for educational programs, they cannot get any stipend for living at all.

Mr. SHANNON. Well, sir, the stipend is not to support the employee's standard of living. The Federal programs view that as money for transportational needs and lunch money and that sort of thing. It is not viewed to support their lifestyle from a Federal point of view.

Senator SPECTER. But the moneys that you have do support them more broadly than simply transportation and lunch money?

Mr. SHANNON. That is correct. Because the out-of-school program is a work experience program. It is not as educationally based in terms of a classroom environment as the Job Training Partnership Act job training programs are.

NUMBER IN OUT-OF-SCHOOL PROGRAM PLACED IN JOBS

Senator SPECTER. What devices do you have, if any, which show accomplishment with the 500 people that you worked on in 1985?

Mr. SHANNON. Well, we can certainly look back to 1984. Of the 522——

Senator SPECTER. How many did you work on in 1984?

Mr. SHANNON. 522 persons. We were able to place into permanent jobs as a result of the work experience 154 of those persons in private sector job opportunties.

Senator SPECTER. And did they stay at work on those jobs?

RETENTION RATE AND FOLLOW-UP OF OUT-OF-SCHOOL PROGRAM

Mr. SHANNON. Their retention has certainly been up to better than 90 days. We do not track after a 90-day period. But those 154 persons had retention beyond 90 days or up to 90 days.

Senator SPECTER. Should you not really track beyond 90 days to really know what good you are doing?

Mr. SHANNON. It would certainly be helpful, Senator.

Senator SPECTER. Well, I would like to model your program and see precisely what you are doing on these subjects, follow through, see how the whole approach is working, with a view to this subcommittee being helpful to you.

Mr. Leeth on my staff will be working with you. And the kinds of questions that I would like to have answered are the specific usages which you make of the money, the kinds of jobs that these 525 people undertake, the retention in the jobs. And my instinct is we ought to know something beyond a 90-day period.

Because this is a really critical aspect of the entire effort to solve a problem of the unemployed. And you are attacking obviously the right group. When you attack 525, you are dealing with who you can out of 7,000. That is a small part of it, that is about 3 percent of the entire problem. And if your results are good enough, I would be interested to know what you do in a cost-effective way.

There is a view to supplementing your program and saying here again if more cannot be done which is cost effective and really well directed, and we would like to follow up and get more answers and more information on this particular line as we proceed into the period ahead.

Mr. SHANNON. Mr. Chairman, we certainly can get you that information consistent with the deadline that Chief Turner set by this Friday.

PREPARED STATEMENTS AND SUBMITTED QUESTIONS

Senator SPECTER. All right, thank you very much. We will insert the complete statements of Mr. McClinton and Mr. Shannon along with the answers to my submitted questions at this point in the record.

[The statements and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

Statement of Curtis McClinton, Jr.

GOOD MORNING MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I AM CURTIS McCLINTON, DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT. WITH ME TODAY IS MATTHEW F. SHANNON, DIRECTOR OF THE D.C. DEPARTMENT OF EMPLOYMENT SERVICES.

FIRST OF ALL, I WOULD LIKE TO CONGRATULATE YOU AND THE SUBCOMMITTEE FOR CONDUCTING THIS SPECIAL HEARING ON TRUANCY, JOBS, JOB TRAINING AND CRIMINAL JUSTICE MATTERS. ONCE AGAIN YOU ARE DEMONSTRATING YOUR DEEP CONCERN FOR THE WELL-BEING OF D.C. CITIZENS.

SINCE I BECAME DEPUTY MAYOR, I HAVE ASSURED THAT ALL THE AGENCIES WITHIN THE ECONOMIC DEVELOPMENT CLUSTER ARE WORKING CLOSELY TOGETHER TO BUILD JOB OPPORTUNITIES FOR D.C. CITIZENS TO THE FULLEST POSSIBLE EXTENT. FOR EXAMPLE, WHEN A D.C. BUSINESS RECEIVES FINANICAL ASSISTANCE THROUGH OUR LOAN AND LOAN GUARANTEE PROGRAMS, OR WHEN THE BUSINESS RECEIVES ANY CONTRACTS AT ALL FROM THE D.C. GOVERNMENT, THE BUSINESS MUST AGREE TO HIRE D.C. RESIDENTS FOR 50 PERCENT OF THE NEW JOBS CREATED AS THE RESULT OF RECEIVING THE FINANCIAL ASSISTANCE. THEREFORE WE HAVE A CLOSE LINK BETWEEN OUR EMPLOYMENT SERVICES DEPARTMENT AND THE D.C. OFFICE OF BUSINESS AND ECONOMIC DEVELOPMENT. WE ALSO HAVE JUST SIGNED AN APPRENTICESHIP AGREEMENT WITH THE D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, SO THAT PUBLIC HOUSING RESIDENTS CAN LEARN THE CRAFTS AND TRADES TO A GREATER EXTENT THAN EVER BEFORE. IN FACT, PUBLIC HOUSING RESIDENTS RECEIVE PRIORITY IN ENTERING ALL OF OUR JOB TRAINING PROGRAMS. MOREOVER, WE FIND THAT OUR MINORITY BUSINESS OPPORTUNITY PROGRAMS, WHICH PLACE A MINIMUM OF 35 PERCENT OF D.C. GOVERNMENT CONTRACTS IN MINORITY BUSINESSES, ALSO HAVE THE EFFECT OF INCREASING THE HIRING OF D.C. RESIDENTS.

WHEN THE MAYOR TESTIFIED ON JUNE 11 BEFORE THE SUBCOMMITTEE, YOU MADE A SUPERB SUGGESTION, MR. CHAIRMAN. YOU SUGGESTED THAT

"SUBSTANTIAL FEDERAL FUNDS" COULD BE MADE AVAILABLE FOR A MODEL EMPLOYMENT AND TRAINING PROGRAM FOR WASHINGTON, D.C. TO TACKLE THE SERIOUS STRUCTURAL UNEMPLOYMENT PROBLEMS FACED BY OUR CITIZENS.

OUR UNEMPLOYMENT RATE IS NOW 8 PERCENT, AND THAT LEVEL CANNOT DECLINE TOO MUCH FURTHER BECAUSE OF THESE VERY DEEP STRUCTURAL UNEMPLOYMENT PROBLEMS. MANY OF OUR CITIZENS SIMPLY DO NOT POSSESS SUFFICIENT SKILLS AND WORK EXPERIENCE DEMANDED BY BOTH SUBURBAN AND URBAN EMPLOYERS.

THEREFORE, WE WOULD LOOK FORWARD TO WORKING WITH YOU, IF YOU LIKE, IN DEVELOPING A MODEL EMPLOYMENT AND TRAINING PROGRAM WHICH CAN ADDRESS THE MOST SERIOUS NEEDS OF THE PEOPLE IN WASHINGTON, D.C. WHO ARE NOT NOW BEING SERVED TO A SUFFICIENT DEGREE. THE PROGRAM WOULD BE LINKED TO ECONOMIC DEVELOPMENT ACTIVITIES WHICH WE ARE DEVELOPING THROUGH MY AGENCIES IN THE DISTRICT, AS WELL AS ECONOMIC DEVELOPMENT ACTIVITIES TAKING PLACE THROUGHOUT THE REGION.

I CAN ASSURE YOU, MR. CHAIRMAN, THAT DEVELOPMENT OF A PROPOSAL FOR THE STRUCTURALLY UNEMPLOYED WOULD MEAN MANY HUNDREDS OF FAMILIES STAYING TOGETHER THAT WOULD OTHERWISE BE SPLINTERED APART BECAUSE OF ECONOMIC DESPAIR. IT MEANS PRODUCTIVE LIVES INSTEAD OF WASTED LIVES. IN SOME CASES IT WOULD MEAN FREEDOM FROM DRUGS, ALCOHOLISM AND CRIME. I KNOW YOU SHARE THESE GOALS WITH ME.

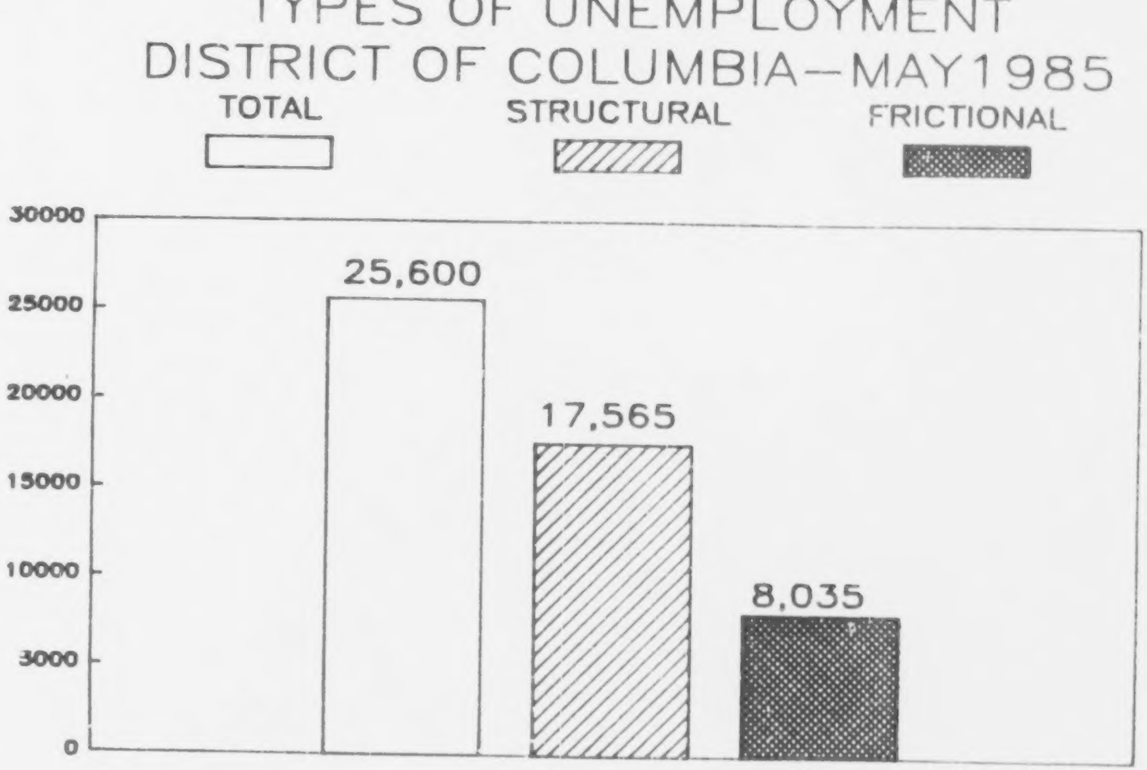
OF THE THE 25,600 UNEMPLOYED IN THE DISTRICT, THE VAST MAJORITY -- OVER 68 PERCENT -- ARE STRUCTURALLY UNEMPLOYED. I AM ATTACHING SOME CHARTS TO MY TESTIMONY SHOWING THIS LEVEL OF STRUCTURAL UNEMPLOYMENT (ATTACHMENTS A, B). THERE IS VERY LITTLE OR NO CYCLICAL UNEMPLOYMENT AT THIS STAGE OF THE BUSINESS CYCLE. THEREFORE, MOST OF OUR WORK INVOLVES REACHING THE 17,565 D.C. CITIZENS WHOSE SKILLS DO NOT MATCH UP WITH EMPLOYER REQUIREMENTS.

A MODEL PROGRAM DESIGNED TO REACH THIS GROUP CAN BE USED TO ADDRESS PROBLEMS OF THE STRUCTURALLY UNEMPLOYED THROUGHOUT

AMERICA. I HAVE ATTACHED TO MY PREPARED STATEMENT (AS ATTACHMENT C) A LIST OF SOME OF THE CITIES -- LARGE AND SMALL, EAST AND WEST, NORTH AND SOUTH -- WHICH STILL HAVE DOUBLE-DIGIT UNEMPLOYMENT. SUCH CITIES AS CLEVELAND, DETROIT, GARY, NEW ORLEANS, CAMDEN, YOUNGSTOWN, AND READING, PENNSYLVANIA ALL ARE IN DOUBLE DIGITS EVEN IN THESE DAYS OF ECONOMIC WELL-BEING, WITH NEW YORK CITY, CHICAGO AND MANY OTHERS NOT FAR BEHIND. ANYWHERE FROM 65 PERCENT TO 75 PERCENT OF THIS UNEMPLOYMENT MUST BE CONSIDERED STRUCTURAL.

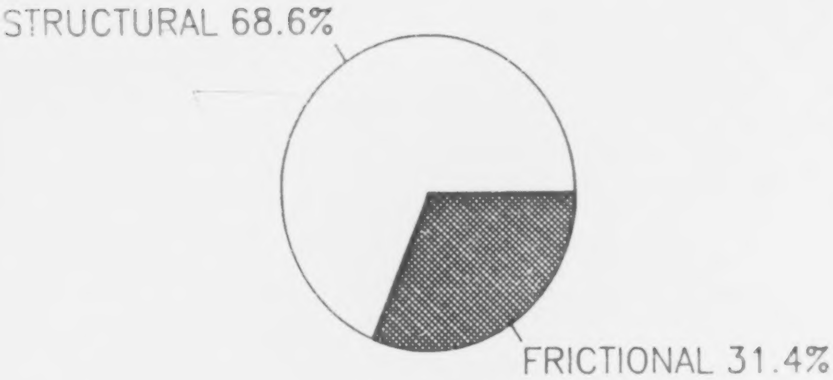
WE WOULD LIKE TO SUBMIT FOR THE RECORD THE TESTIMONY OF MR. MATTHEW F. SHANNON, DIRECTOR OF THE D.C. DEPARTMENT OF EMPLOYMENT SERVICES (DOES). THIS STATEMENT DETAILS THE VARIETY OF PROGRAMS WITHIN DOES TO ADDRESS OUR CRITICAL UNEMPLOYMENT PROBLEMS. WE WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

ATTACHMENT A



ATTACHMENT B

TYPES OF UNEMPLOYMENT DISTRICT OF COLUMBIA MAY 1985



ATTACHMENT C

UNEMPLOYMENT RATES, SELECTED CITIES APRIL 1985

Gary, Indiana	21.2%
Waterloo, Iowa	16.4%
Laredo, Texas	16.0%
Compton, California	15.2%
Youngstown, Ohio	15.1%
Modesto, California	15.1%
Canton, Ohio	15.0%
Stockton, California	13.4%
Brownsville, Texas	13.4%
Hammond, Indiana	13.3%
Camden, New Jersey	13.1%
Detroit, Michigan*	12.8%
Cleveland, Ohio	12.5%
Jersey City, New Jersey	12.4%
Peoria, Illinois	12.4%
Newark, New Jersey	12.3%
Fresno, California	12.3%
New Orleans, Louisiana	11.4%
Pueblo, Colorado	10.6%
Dayton, Ohio	10.5%
El Paso, Texas	10.3%
Mobile, Alabama	10.1%
Tacoma, Washington	10.1%
Reading, Pennsylvania	10.1%

*Detroit's rate as of December, 1984

Statement of Matthew F. Shannon

I AM ALWAYS GLAD TO HAVE THE OPPORTUNITY TO SHARE WITH YOU INFORMATION ON OUR OUTSTANDING EMPLOYMENT AND TRAINING PROGRAMS. OUR D.C. COMMITMENT TO THESE TRAINING PROGRAMS IS FAR GREATER, PER CAPITA, THAN THE LEVEL OF COMMITMENT FOUND IN ANY STATE, COUNTY OR MUNICIPAL JURISDICTION IN AMERICA.

THIS FISCAL YEAR, THE DISTRICT IS SPENDING $18.4 MILLION OF OUR OWN FUNDS FOR EMPLOYMENT AND TRAINING PROGRAMS, COMPARED TO $17.4 UNDER OUR JTPA PROGRAM. WE HAVE BEEN BUILDING UP OUR LOCAL EMPLOYMENT AND TRAINING PROGRAMS FROM A BASE OF NEARLY ZERO WHEN MAYOR BARRY TOOK OFFICE IN 1979. SINCE THAT TIME THE DISTRICT HAS FUNDED 16,139 TRAINING OPPORTUNITIES WITH LOCAL FUNDS, AND 29,207 MORE WITH FEDERAL FUNDS. MOREOVER, THE D.C. AND FEDERAL GOVERNMENTS TOGETHER HAVE FUNDED AN ADDITIONAL 114,929 SUMMER JOB OPPORTUNITIES SINCE 1979.

I WOULD LIKE TO DISCUSS WITH YOU BRIEFLY EACH OF OUR EMPLOYMENT AND TRAINING PROGRAMS.

JTPA

WE OF COURSE HAVE THE FULL RANGE OF JTPA TRAINING SERVICES. WE TRAIN IN ACCOUNTING, WORD PROCESSING, MEDICAL TRANSCRIPTION, COPY MACHINE REPAIR, COMPUTER OPERATION, ELECTRICAL APPLIANCE REPAIR, AND MANY OTHER FIELDS IN DEMAND BY LOCAL EMPLOYERS.

THIS YEAR WE ARE TRAINING 2,800 CITIZENS IN OUR FEDERALLY FUNDED YEAR-ROUND PROGRAMS, WITH ANOTHER 8,270 FEDERALLY-FUNDED SUMMER JOBS. FULLY 69 PERCENT OF OUR JTPA PLACEMENTS HAVE BEEN IN THE PRIVATE SECTOR -- IN CONSONANCE WITH OUR DESIRE TO ACHIEVE THE HIGHEST POSSIBLE LEVEL OF PRIVATE SECTOR JOBS FOR D.C. CITIZENS, AND REDUCE CITIZEN DEPENDENCY ON GOVERNMENT.

MOREOVER, WE ASSIST 4,000 CITIZENS THROUGH THE WIN PROGRAM, WITH 1,855 ENTERING EMPLOYMENT PER YEAR.

YOUTH EMPLOYMENT ACT (YEA)

WE GO FAR BEYOND FEDERAL EMPLOYMENT AND TRAINING PROGRAMS THROUGH THE LOCALLY FUNDED YOUTH EMPLOYMENT ACT, CONSISTING OF FIVE MAIN COMPONENTS. WE TRAIN 3,995 CITIZENS THROUGH YEA IN YEAR-ROUND JOBS -- 43 PERCENT MORE THAN WE TRAIN UNDER JTPA. IN ADDITION, WE EXPECT TO INCREASE THE NUMBER OF YEAR-ROUND TRAINEES TO 4,735 IN FISCAL 1986.

MOST ENCOURAGING IS A RECENTLY COMPLETED SURVEY WHICH INDICATES THAT 87 PERCENT OF OUR JOB PLACEMENTS FROM YEA ARE IN THE PRIVATE SECTOR. OUR CITIZENS' BEST FUTURES ARE IN THE PRIVATE SECTOR, WITH THE BEST SALARIES AND THE BEST CHANCES FOR INDEPENDENCE AND SELF-SUFFICIENCY.

I WILL DESCRIBE NOW OUR FIVE YEA COMPONENTS.

SUMMER JOBS

WE HAVE BEEN ABLE TO PLACE 24,057 YOUTH IN JOBS THIS SUMMER, WHICH AMOUNTS TO 377 SUMMER JOBS PER 10,000 IN TOTAL POPULATION. THIS LEVEL EXCEEDS BY WIDE MARGINS THE LEVEL FOUND IN OTHER CITIES. IN FACT, NO OTHER CITY IN A 25 CITY SURVEY HAD MORE THAN 129 JOBS PER 10,000 IN POPULATION.

WE HAVE REFERRED TO A SUMMER JOB EVERY YOUTH WHO HAS REGISTERED WITH US, WITHOUT REGARD TO THE INCOME LEVEL OF THE YOUTH AND THEIR FAMILIES. I AM NOT SURE WE CAN FIND ANOTHER CITY IN AMERICA, OR ANYWHERE ELSE FOR THAT MATTER, THAT HAS ACCOMPLISHED THIS FEAT AT ANY TIME IN THEIR HISTORY. OUR GOAL IS TO CATCH THE YOUTH AT THE EARLIEST POSSIBLE AGE AND EXPOSE THEM TO THE WORKPLACE -- AND EXPOSE EMPLOYERS TO OUR YOUTH AS WELL -- TO HELP BREAK THE UNEMPLOYMENT CYCLE.

TRAINING AND RETRAINING PROGRAM (TREP)

IN OUR TREP PROGRAM, WE TRAIN 1,165 D.C. CITIZENS (PROJECTED TO INCREASE TO 1,575 IN FY '86). THESE ARE CLASSROOM TRAINING

PROGRAMS, COSTING $3.6 MILLION IN FY '85, IN AREAS OF EMPLOYER DEMAND.

WITH THE LEADERSHIP OF MAYOR BARRY AND DEPUTY MAYOR McCLINTON, WE ARE REACHING OUT TO THE PRIVATE SECTOR TO THE FULLEST EXTENT. FOR EXAMPLE, WE HAVE PLANNED TRAINING PROGRAMS JOINTLY WITH THE BANKS (FOR BANK TELLERS), WITH RETAIL CORPORTATIONS (FOR CLERKS AND MANAGERS), WITH HOTELS (FOR CHEFS AND BANQUET WAITERS), WITH RESTAURANTS (FOR WAITERS AND WAITRESSES IN THE BETTER RESTAURANTS), WITH HOSPITALS (FOR BILLING CLERKS AND ADMITTING CLERKS), WITH GROCERY STORES (CLERKS), THE ELECTRONICS INDUSTRY (TECHNICIANS AND REPAIR SPECIALISTS), WITH APARTMENT AND OFFICE BUILDING OWNERS (FOR AIR CONDITIONING, HEAT, REFRIGERATOR REPAIR-PERSONS), WITH METRO (DIESEL MECHANICS), AND MANY OTHER EXAMPLES. THE PRIVATE SECTOR GUIDES THE PROGRAM ALONG WITH US EVERY STEP OF THE WAY, AND IS THEREFORE IN A BETTER POSITION TO HIRE THE SUCCESSFUL GRADUATES OF THE PROGRAM.

ADULTS WITH DEPENDENTS (AWD)

THE AWD PROGRAM IS AN ON-THE-JOB TRAINING PROGRAM, WHERE WE PAY UP TO 50 PERCENT OF THE EMPLOYEE'S WAGES, UP TO A YEAR. THIS PROGRAM PLACES 1,555 CITIZENS INTO OJT OPPORTUNITIES A YEAR, NEARLY ALL OF WHICH ARE IN THE PRIVATE SECTOR. WE ARE LOOKING AT WAYS TO EXPAND THIS PROGRAM, PERHAPS INCLUDING YOUTH AND OTHERS WHO DO NOT HAVE DEPENDENTS INTO THIS SUCCESSFUL PROGRAM.

IN-SCHOOL

THE IN-SCHOOL PROGRAM IS DESIGNED TO GIVE VALUABLE EXPERIENCE TO HIGH SCHOOL JUNIORS AND SENIORS BY PROVIDING WORK AFTER SCHOOL HOURS, AND HAS THE ADDED BENEFIT OF HELPING TO PREVENT DROP-OUTS FROM SCHOOL. THE ADDED INCOME GIVES YOUTH THE INCENTIVE TO STAY IN SCHOOL. THIS $1.2 MILLION PROGRAM IS ALSO LOCALLY FUNDED, AND IS PROJECTED TO INCREASE TO $1.6 MILLION IN FY '86. THE PROGRAM SERVES 750 IN FY '85 (TO INCREASE TO 925 IN FY '86).

AS A PROGRAM INNOVATION, WE ARE PLACING 100 YOUTH AFTER SCHOOL IN THE PRIVATE SECTOR.

OUT-OF-SCHOOL

MANY YOUTH WHO HAVE ALREADY DROPPED OUT OF SCHOOL NEED VERY INTENSIVE TRAINING, COUPLED WITH REMEDIAL EDUCATION AND GED (HIGH SCHOOL EQUIVALENCY) TRAINING. THIS $2.6 MILLION PROGRAM (SLATED FOR $3.4 MILLION IN FY '86) INVOLVES 525 CITIZENS (650 FOR FY '86). INITIALLY THE CITIZENS ARE PLACED IN PUBLIC AND NON-PROFIT SECTOR POSITIONS, WITH THE GRADUATES IDEALLY MOVING INTO THE PRIVATE SECTOR WHENEVER POSSIBLE.

APPRENTICESHIP

WE ALSO HAVE A FINE APPRENTICESHIP PROGRAM, INVOLVING 2,500 METRO AREA CITIZENS IN THE FULLY VARIETY OF CRAFTS AND TRADES. THE RATE OF D.C. RESIDENTS IN THE REGION'S APPRENTICESHIP PROGRAM HAS INCREASED 600 PERCENT SINCE 1979. WE PROJECT THAT 850 D.C. CITIZENS WILL BE PLACED INTO APPRENTICESHIP IN THE COMING YEAR.

WITH ALL OF THESE EFFORTS, WE BELIEVE WE HAVE REDUCED THE UNEMPLOYMENT RATE IN THE DISTRICT BY A MINIMUM OF TWO PERCENTAGE POINTS. AT ONE TIME, THIRTY MONTHS AGO, THE D.C. UNEMPLOYMENT RATE WAS 13.6 PERCENT. MUCH OF THE DECLINE IN THE RATE TO THE PRESENT 8.0 PERCENT LEVEL IS DUE TO THE ECONOMIC RECOVERY; HOWEVER, OUR DEEP LOCAL COMMITMENT TO TRAINING AND PLACEMENT HAS MADE A REAL DIFFERENCE. THE NEXT MAJOR STEP WE FACE IS TO BRING OUR RATE DOWN FROM THE CURRENT 8 PERCENT LEVEL, A LEVEL WHICH IS REFLECTIVE OF THE SERIOUS STRUCTURAL UNEMPLOYMENT PROBLEMS FELT IN OUR CITY -- AND IN OTHER CITIES ACROSS THE NATION.

TO MAKE FURTHER GAINS IN THE UNEMPLOYMENT RATE, WE WILL NEED TO GO FAR BEYOND PRESENT LEVELS OF COMMITMENT, AS ENORMOUS AS THEY ARE. FEDERAL FUNDING FOR EMPLOYMENT AND TRAINING WAS $61 MILLION FOR D.C. AS RECENTLY AS 1979, AND NOW HAS DECLINED TO $17 MILLION. OUR UNPRECEDENTED LOCALLY FUNDED PROGRAMS HAVE COMPENSATED FOR LESS THAN HALF OF THE DECLINE IN FEDERAL FUNDING FOR TRAINING; YET, AS YOU CAN SEE, MR. CHAIRMAN, WE ARE MAKING SIGNIFICANT GAINS WITH THE FUNDS WE DO HAVE TO WORK WITH.

QUESTIONS SUBMITTED BY SENATOR SPECTER

DEPARTMENT OF EMPLOYMENT SERVICES (DOES)

1. QUESTION:
What are the specific uses for the funds for the Job Training Partnership Act Program (JTPA)?

1. ANSWER:
Attached is a list of all Department of Employment Services' (DOES) contracts, reflecting the dollar amounts, numbers served and the areas of training for the JTPA program. (See also the letter dated July 19, 1985 to Senators Specter and Lautenberg.)

2. QUESTION:
What are the specifics of the Out-of-School Program and what kinds of jobs are offered.?

2. ANSWER:
This program is targeted for high school dropouts who have very limited prior employment experience. The program served 525 in FY 1985 at a cost of $2.5 million, and is slated to serve 650 in FY 1986 for $3.1 million. Wages are paid by the Youth Employment Act Program (YEA).

In the Out-of-School Program, youth receive on-the-job work experience with twenty public and non-profit agencies in such fields as: clerical and word processing, printing, landscaping, computer operations, construction, bookkeeping, food service and allied health.

At least one day a week, Out-of-School Program participants attend the D.C. Street Academy to improve their reading and math skills. Participants also receive training in computer operation and word processing. At least 90 percent of the program participants gain 25 percent in math and English achievement tests, or the equivalent of at least two grade levels. Learning therapists as well as math and English instructors work closely with the participants.

3. QUESTION:
What is the possibility of lengthening the 90-day period for tracking graduates of the Out-of-School Program to assure their transition into non-subsidized jobs?

3. ANSWER:
The Department had been tracking the progress of graduates in the Out-of School program at 30 and 90-day intervals. However, a new tracking system is being put in place to track the the graduate's progress up to a minimum of a 180-days. Employers are contacted to see if the graduate is still on the job, what job the graduate is performing, how the graduate is performing in the job, and what the wage level of the graduate is. The administration is committed to tracking employment results for the longest possible time in order to fully evaluate the short- and-long-term impact of our training and retraining efforts. We look forward to keeping the Committee informed of our progress in the regard.

JTPA CONTRACTS

PROGRAM YEAR 1985

CONTRACT NAME	SUBGRANT NUMBER	AMOUNT	NUMBER SERVED	DATES	TRAINING AREAS	CONTACT PERSON ADDRESS AND TELEPHONE NUMBER
The American Institute for Transportation and Business Development	JHH 120	$124,653	50	7-1-85 to 6-30-86	Stationary Engineer	Dr. Brenda J. Hamer 1025 Vermont Avenue, N.W. Suite 920 Washington, D.C. 20005 (371-2277)
Anchor Mental Health Association	JAA 120	$ 89,993	30	7-1-85 to 6-30-86	Kitchen Helper Maintenance Engineer Clerk General I & II	Mr. Mark Englehardt 804 Rhode Island Avenue, N.E. Washington, D.C. (529-5203)
Arts, D.C./Labor Agency of Metropolitan Washington D.C., Inc.	JAO 120	$100,000	60	7-1-85 to 6-30-86	Direct Placement /Art Related Occupations	Ms. Lynn Zamil Randall School 1st and Eye Streets, S.W. Washington, D.C. 20024 (727-3412)
Career Works, inc.	JJD 120	$150,000	27	7-1-85 to 6-30-86	Medical Office Assistant	Mr. Harvey D. Brookins 545 8th Street, S.E. Washington, D.C. 20003 (544-5434)
Control Data Corporation	JPB 120	$120,000	120	7-1-85 to 6-30-86	Educational Development	Mr. Robert J. Freeman 51 N Street, N.E. Washington, D.C. 20002 (789-6437)
Critique Career Management Services	JBH 120	$100,000	50	7-1-85 to 6-30-86	Clerk Typist	Ms. Lyndia C. Grant 7323 Georgia Avenue, N.W., 2nd Floor Washington, D.C. 20012 (882-8558)
D.C. Association for Retarded Citizens	JAC 120	$ 62,911	36	9-1-85 to 6-30-86	Food Service, Office Skills, Industrial Maintenance	Ms. Mary Lou Macciarello 900 Varnum Street, N.E. Washington, D.C. (636-2950)
DCPS - Gordon Center	JAN 120	$218,762	100	7-1-85 to 6-30-85	Clerk Typist, Word Processing, Food Service Air Conditioning and Office Machine	Mr. Servando Cuellar 35th & T Streets, N.W. Washington, D.C. (282-2212)
DCPS - Skills Center	JAK 128	$361,480	210	7-1-85 to 6-30-86	Clerk Typist, Word Processing, Tune-Up Mechanic, Electrical Appliance Servicer	Mrs. Otelia Redman First and P Streets, N.W., Armstrong Adult Education Center Washington, D.C. 20001 (673-6908)

JTPA CONTRACTS

PROGRAM YEAR 1985

CONTRACT NAME	SUBGRANT NUMBER	AMOUNT	NUMBER SERVED	DATES	TRAINING AREAS	CONTACT PERSON ADDRESS AND TELEPHONE NUMBER
Diversified Resources	JAX 120	$191,999.93	80	7-1-85 to 6-30-86	Business Occupations Pre-Employment Placement	Ms. Shirley Pyke 733 15th Street, N.W. Washington, D.C. 20005 (737-9800)
IndoChinese Community Center	JAD 120	$ 94,000.00	30	7-1-85 to 6-30-86	Enclish as a Second Language	Mr. Vilay Chaleunrath 1628 16th Street, N.W. Washington, D.C. 20009 (462-4330)
ITT	JAW 120	$220,500	70	7-1-85 to 6-30-86	Telecommunications	Mr. Alonzo Evars 1331 H Street, N.W. Washington, D.C. 20001 (783-0263)
Labor Agency of Metropolitan Washington	JAQ 131	$340,000	175	7-1-85 to 6-30-86	Direct Placement	Mr. Frank Hollis 1411 K Street, N.W. Washington, D.C. (626-0620)
Latin American Youth Center	JAP 120	$207,110	95	7-1-85 to 6-30-86	Graphic Arts, Clerk Typist, Word Processor, Bookkeeping, Catering and Food Services	Enrique Rivera-Torres 3045 15th Street, N.W. Washington, D.C. 20009 (483-1140)
LEEO	JAV 120	$235,000	360	7-1-85 to 6-30-86	Various	Mr. David A. Molloy 309 E Street, N.W. Washington, D.C. 20001 (347-4330)
Market Tire of Maryland, Inc.	JAZ 120	$114,750	30+5	7-1-85 to 5-31-86	Automotive Service Mechanic	Mr. H.L. Johnson 1444 P Street, N.W. Washington, D.C. (232-1800)
MetroStudy	JAE 120	$215,000	100	7-1-85 to 6-30-86	Electrician Pipefitter, Sheet Metal, Carpentry	Mr. Al Beverly 219 Florida Avenue, N.W. Washington, D.C. 20001 (797-8865)
National Association of the Deaf	JAF 120	$118,114.62	25	7-1-85 to 6-30-86	Clerk Typist Mail Clerk	Mr. Bill Etheridge 814 Thayer Avenue Silver Spring, Maryland 20910 (587-1788)

JTPA CONTRACTS

PROGRAM YEAR 1985

CONTRACT NAME	SUBGRANT NUMBER	AMOUNT	NUMBER SERVED	DATES	TRAINING AREAS	CONTACT PERSON ADDRESS AND TELEPHONE NUMBER
Preston College	JBR 120	$ 80,000	36	7-1-85 to 3-31-86	Clerk Typist Electro/Micro-Computer Technician	Mr. Robert Crump 4000 Albemarle Street, N.W. Suite 310 Washington, D.C. (364-1908)
Progressive Word Processing Center, Inc.	JAS 120	$130,000	30	7-1-85 to 6-30-86	Medical Secretary Word Processor	Ms. Sylvia Groomes 1801 18th Street, N.W. Washington, D.C. 20009 (265-3689)
Quality Business Systems	JBJ 120	$234,000	60	7-1-85 to 6-30-86	Copy Machine Repair Technicians	Mr. Robert Gordon 1300 N Street, N.W. Washington, D.C. 20005 (737-0593)
Self-Help for Women Ex-Offenders	JBB 120	$110,000	15+5	7-8-85 to 6-30-86	Word Processing	Ms. Elizabeth Ramadass/ Ms. Lorraine Hoosier 1329 9th Street, N.W. Washington, D.C. 20001 (332-3033)
Social Educational & Research Development, Inc. (SERD)	JAT 120	$106,100	50	7-1-85 to 6-30-86	Word Processing Clerk	Ms. Mercedes Miller 5225 Wisconsin Avenue, N.W. Washington, D.C. 20015 (364-5733)
S.E. Cluster	JHS 120	$ 90,000	65	7-1-85 to 6-30-86	Placement	Mr. Thomas Gore 220 Highview Place, S.E. Washington, D.C. 20032 (584-7001)
Strayer College	JMB 120	$150,000	60+10	7-1-85 to 6-30-86	Clerk Typist	Ms. Betty Shuford 1100 Vermont Avenue, N.W. Washington, D.C. (861-5235)
Travel and Lodging Dynamics	JBI 120	$ 27,000	50	7-1-85 to 3-31-86	Bartenders	Mr. Ellis D. Norman 2225 Georgia Avenue, N.W. Washington, D.C. 20001 (462-4667)
University of the District of Columbia	JAH 220	$270,000	150	7-1-85 to 6-30-86	Clerk Typist, Word Processors, Computer Operators, Computer Programmers	Mrs. Sandra Edgecombe 1100 Harvard Street, N.W. Washington, D.C. 20009 (673-7032)

METROPOLITAN POLICE DEPARTMENT

STATEMENT OF MAURICE TURNER, CHIEF, METROPOLITAN POLICE DEPARTMENT

ACCOMPANIED BY DEPUTY CHIEF CHARLES E. SAMARRA, COMMANDER, SPECIAL OPERATIONS DIVISION

INTRODUCTION OF WITNESS

Senator SPECTER. Senator Lautenberg.

Senator LAUTENBERG. Thank you, Mr. Chairman. I am here to join in this first markup as ranking member. I have no questions at the moment.

Senator SPECTER. We have one additional witness, Chief Turner, on an additional subject. We can cover that briefly and then proceed to markup.

Chief Turner, I have asked you to be present today with a view to exploring the subject of the costs of certain arrests categorized as arrests by appointment. And this subject was the subject of inquiry some time ago. And I had expressed some concern about the appropriateness of arrest by appointment in terms of the cost to the city.

I understand the nature of your problem on wanting to contain demonstrations and not to let them get out of hand. Also some concern that I have about the whole procedure of having arrest by appointment in the sense of a contrivance for media attention, although that is not the direct function of this subcommittee. That is another subject, although it is a matter of concern to me.

But I wanted to explore that with you again before we move ahead to markup and to the allocation of funds for the police department.

Would you identify yourself please.

Deputy Chief SAMARRA. I am Deputy Chief Charles E. Samarra. I am the Commander of the Special Operations Division.

Senator SPECTER. Chief Samarra, were you present when we discussed this subject before?

Chief SAMARRA. No, sir; I was not.

Senator SPECTER. Who was present at that time?

Chief TURNER. It was Deputy Chief John Connors. Chief Connors subsequently had to undergo a very serious operation. At this time he has been recuperating since January 20 of this year.

Senator SPECTER. Was it Chief Connors that I had the exchanges with? He defended his program very strongly.

Chief TURNER. Yes, sir.

Senator SPECTER. OK. Chief Turner, what is your view about the cost of the police department on these so-called arrests by appointment?

STATEMENT OF MAURICE TURNER

Chief TURNER. Let me say a few things before I answer that, Mr. Chairman. To date since November 1984 up until July 18, we have arrested 2,479 individuals at the South African Embassy.

Senator SPECTER. Pardon the interruption, Chief, you may proceed.

Chief TURNER. Certainly, sir. As I mentioned previously, from November 1984 up until July 18, 1985, the Metropolitan Police had arrested 2,479 individuals at the South African Embassy. Based on the cost of $13 per man-hour, we come up with a figure of $117,975. If we divide the 2,479 into the $117,975, we come up with a per cost of $48 per individual. I think that cost is much more favorable than the cost we have in other demonstrations at other embassies.

ARREST BY APPOINTMENT

Senator SPECTER. Do you have arrest by appointment at any other demonstrations?

Chief TURNER. We do not use the term arrest by appointment. But certainly——

Senator SPECTER. What do you call it?

Chief TURNER. I call it good planning.

Senator SPECTER. Do you have good planning at any other demonstrations?

Chief TURNER. I think so, sir. I think past conditions have proven very vividly to us, that when we have demonstrations in this city, this being the seat of the Federal Government where people can seek redress: they attempt to demonstrate some of their problems. When they violate the law, they are going to be arrested.

And I think it is wise that the police department know what their plans are, who their leaders are, and what they intend to do. And I think it eases some of the adversary type confrontation that we have had. I think——

Senator SPECTER. What is your judgment as to whether we would have had 2,479 arrests if they had been subject to good policy, as you put it, or arrest by appointment as I term it?

Chief TURNER. I think these type of arrests occur all the time. At the Russian Embassy we do the same thing.

CONVENIENCE OF ARREST BY APPOINTMENT

Senator SPECTER. Do you think we would have had that many, 2,479, if it had not been convenient.

Chief TURNER. In my opinion, I think enough people believe in that cause that they would have been arrested.

Senator SPECTER. Do you think the approach is not encouraging more arrests?

Chief TURNER. No, sir; I do not. In fact, I know that some officers up on the scene at the South African Embassy have talked individuals out of being arrested. There was a group that came down from up in New Hampshire or Massachussetts, they wanted to be arrested. And one of the captains did, in fact, talk them out of being arrested. So I do not think that we are encouraging arrest in that area.

Senator SPECTER. Well, I am not suggesting that you are encouraging arrests or that any approach by the police department is encouraging arrest. What I am inquiring into is whether the timing of the arrest and the policy so that people might be more inclined to be arrested if they can have the arrests occur by arrangement.

INSTRUCTIONS ON HOW TO GET ARRESTED

There has also been the issue about whether people know what kind of conduct to engage in to be arrested. One attorney came from Philadelphia who did not know precisely what to do. He was trying to become arrested and he needed advice on how to be arrested or what to do by way of demonstration or where to stand. People are laughing, but that happens to be a fact.

Senator LAUTENBERG. Is that a Philadelphia man in particular who cannot get himself arrested?

Senator SPECTER. It came to my attention when a Philadelphia man, it was in the newspaper, Theodore Mann, did not know how to be arrested and had to be instructed on how to be arrested.

Chief TURNER. Senator, oftentimes people come up and say if I cross this line will I be arrested. And we say yes, and they cross the line and they are arrested. One instance this year when we were not apprised as to what to expect or anticipate at the South African Embassy, we had to mobilize the entire civil disturbance unit, call them in from the districts in the city to police the South African Embassy because there was a larger turnout than normal there.

When we know what to expect, or to anticipate, we can bring sufficient troops and resources to handle it. We know whether or not we have to mobilize prisoner control, or whether we have to call extra or additional officers in. I think it is cost effective for the city, the way we are policing them.

AVERAGE COST TO ARREST AN INDIVIDUAL

Senator SPECTER. What does it cost to arrest people otherwise, Chief Turner? You say the that these are $48 per arrest. Do you have a figure on what other arrests cost?

Chief TURNER. I think we are still coming up with $13 an hour. We are talking about the cost and salary to process a prisoner. If a police officer spends 2 hours processing a prisoner, that is $26. The fact of the matter is if the police officer is working, he would be working whether he is on routine patrol. To make the arrest, there is still that cost of $13 an hour.

Senator SPECTER. At 2 hours, $13 an hour, the cost would be $26, which of course is less than $48 per arrest. Do you have a figure as to what it costs per arrest on a citywide yearlong basis to contrast with the arrest cost that you cited here?

Chief TURNER. I would say the average arrest cost is somewhere around four times $13, which would be $52. That is under the *Lively* decision. We have to process that individual and have him or her in the central cellblock within 4 hours to conform with the District court's edicts.

AVERAGE TIME TO PROCESS AN INDIVIDUAL

Senator SPECTER. Is the basis of your estimate of 4 hours for $52 cost per arrest based upon the requirement that they be processed within 4 hours.

Chief TURNER. I did not get the first part of that question.

Senator SPECTER. What is the basis of your estimate of $52 per arrest?

Chief TURNER. It normally takes about 4 hours to process a prisoner if you charge them with robbery or larceny. I am just picking the norm in the amount of time.

I would like to point out that oftentimes we are at scenes of demonstrations with 400 and 500 police officers and we make no arrests.

Senator SPECTER. Well, $52 for an arrest on the average is not very far from $48 per arrest which you have cited on these planned arrests.

Chief TURNER. The other demonstrations, if I would take the demonstrations at the United Kingdom, USSR, Nigaragua, Romania, El Salvador, and Guatemala, those figures come up to $187 per arrest for the amount of time and the amount of arrests.

Senator SPECTER. Of course, the costs per arrest is also influenced by the number of arrests you make at the same time. It is cheaper by the dozen, cheaper by the larger the number you have?

Chief TURNER. Same amount of man-hours.

OVERHEAD COST IN COMPUTING PROCESSING TIME

Senator LAUTENBERG. Also though do you not have to, Mr. Chairman, realistically assign costs to other arrests that are much less direct but are nevertheless fairly large? If you have a patrolman on a beat and they make one arrest in a day, or something like that, all of the time that has been used in surveillance ought to be charged to that particular incident.

In this case, I mean you are organizing your time, it is much more precisely defined. But otherwise I do not see how you can, you know, find an exact formula for a single arrest. When you have a felon out there, criminal, someone who has committed a violent act, you may have police cars around the city looking for someone and finally it happens. Can you say it is only the 10 minutes or so?

With all due respect, I am not sure what the cost per arrest significance is. But I think that if you are going to compare these things, I think you have to compare them based on the total effort used including the time for making the arrest.

Senator SPECTER. Senator Lautenberg, I think you are right. If you allocate overhead and a great many other factors, you are going to have a very different picture. And I am not certain that the cost per arrest is very weighty either.

The central question in my mind is whether there would be fewer arrests if it were not so convenient to be arrested? That is what I am really looking toward. And whether it might not be much less expensive in the District of Columbia not to have this good planning, as the Chief puts it, or arrests by appointment as I put it?

Chief TURNER. It is my observation that some people feel so strongly about certain issues that they intend to be arrested. And I just think I would be remiss if I did not have the necessary resources to cover those incidents. And by talking with people, we have been able to learn from the experience. From May Day on forward, when we talk with people, when we make them furnish chaperones, when they identify what they want to be arrested for, what the cause of their arrest is, I think it is a tactic that is used by law enforcement throughout the country.

DISPOSITION OF PERSONS ARRESTED AT SOUTH AFRICAN EMBASSY

Senator SPECTER. Chief, what has the disposition been of these 2,479 people who have been arrested? How many have been convicted? What has been the sentence or fine?

Chief TURNER. I do not have those figures here before me, but I would say that most of them, 99 percent. were probably dismissed by the U.S. attorney. I will furnish that for you.

Senator SPECTER. Would you please?

Chief TURNER. Yes, sir.

Senator SPECTER. That is the other aspect. I am not saying that these people ought to be treated in any special way because they are arrested with good planning or arrested by appointment. But part of the analysis of the law enforcement approach is what is the seriousness of the prosecution.

The police have an obligation under the law to make an arrest when the law has been violated. And then the prosecuting attorney has discretion as to whether he will pursue the matter. Those are our standard approaches——

Chief TURNER. I think we are in a catch-22 position.

Senator SPECTER. Let me finish, Chief Turner. But the point that I am coming to is if the prosecution procedure as defined by both arrests and handling by the U.S. attorney is not to really press the law with the remedies which are available but is only to cooperate in the process, then it really raises a concern in my mind about how itself handled overall.

And I realize that you have your own role which is delineated. You can only look at the conduct and make a decision about whether the law has been violated and whether there ought to be an arrest. And again, I say I am not suggesting that Mr. diGeneva throw the book at all these people to try to discourage them from symbolic conduct which leads to arrest, but it is a matter of concern to me and to this subcommittee in terms of what the costs are.

NONPROSECUTION BY SOUTH AFRICAN EMBASSY

Chief TURNER. I would just like to say that the officials at the South African Embassy want the individuals arrested. However, they will not prosecute on the other end. And the police department is in there where they are violating the law, and we are asked to make an arrest, we make an arrest, yet there is no prosecution in the courts.

CLOSING REMARKS

Senator SPECTER. Senator Lautenberg.

Senator LAUTENBERG. I have no questions, Mr. Chairman. I would express a view that these are peaceful demonstrations, and I think the department is doing appropriately what it must do. Theirs is not to examine the ideological conflict.

I think it is fair to say, Senator Specter and I feel very strongly about the protests in terms of what is taking place in South Africa, but that is not the issue that we have to deal with here.

The actions within their country are reprehensible and people here want to voice their objection. And that they do it I think essentially by peaceful means, it is up to the police department to continue to enforce the law even at times when it may not be the kind of arrests that the officers would like to make. It is too bad we cannot get these people to come down to the police station, line up there, and avoid the problem of having to transport them.

But the fact is that these protests, I think, are important protests. And the fact they are publicized suits my mind. I think it is something we have to do. And I think the department functions quite well in these areas and does it with some constraint. And that is the way it ought to be done. It costs money to deal with these things I know, unfortunately.

Senator SPECTER. Well, I concur with Senator Lautenberg that the South African policy is reprehensible. And I applaud those who make the process. My sole concern is whether or not there is a less expensive way for the police department to function, to use more of the police resources for robberies and burglaries, which I know the police commissioner would like to direct his attention to as well.

PREPARED STATEMENT

All right, thank you very much Chief Turner and Deputy Chief Samarra. We have the complete statement of Chief Turner and it will be inserted in the record.

Chief TURNER. Thank you, sir.

[The statement follows:]

STATEMENT OF MAURICE TURNER

GOOD MORNING SENATOR SPECTER, I AM PLEASED TO HAVE THIS OPPORTUNITY TO DISCUSS THE ACTIVITIES SURROUNDING THE RECENT DEMONSTRATIONS AND PROTESTS AT THE SOUTH AFRICAN EMBASSY.

THE UNIQUE NATURE OF THE DISTRICT OF COLUMBIA FREQUENTLY POSES MANY DIFFERENT TYPES OF ENFORCEMENT RESPONSIBILITIES FOR THE METROPOLITAN POLICE DEPARTMENT. MANY OF US WILL AGREE THAT DUE TO THE FACT THIS CITY IS THE NATION'S CAPITAL, THE SEAT OF FEDERAL AUTHORITY AND THE CENTER OF INTERNATIONAL DIPLOMACY, THERE ARE THOSE WHO FEEL THAT THE DISTRICT, OBVIOUSLY, IS THE PLACE FOR SOCIAL PROTEST. AND IT CERTAINLY CARRIES THE MEDIA FORUM FOR CAPTURING THE ATTENTION OF NATIONAL AND INTERNATIONAL POLICY MAKERS.

I THINK IT IS IMPORTANT TO HIGHLIGHT THAT THE POLICE DEPARTMENT, HISTORICALLY, HAS EFFECTIVELY MANAGED A WIDE VARIETY OF DEMONSTRATIONS AND SOCIAL PROTESTORS. SOME HAVE BEEN COOPERATIVE AND ORDERLY, AND OTHERS HAVE NOT BEEN QUITE AS ACCOMMODATING.

WE HAVE HAD IN PLACE, FOR SOME TIME, AN OFFICIAL POLICY FOR MANAGING ANY GROUP PLANNING A DEMONSTRATION IN THE DISTRICT OF COLUMBIA. USUALLY UPON RECEIVING INFORMATION THAT A GROUP IS PLANNING A DEMONSTRATION OR IS PLANNING TO ENGAGE IN SOCIAL PROTEST, IT IS OUR POLICY TO CONTACT THE ORGANIZATION OR GROUP AS SOON AS POSSIBLE.

A MEETING IS REQUESTED WITH REPRESENTATIVES OR A SPOKESPERSON IN ORDER TO OBTAIN AS MUCH INFORMATION AS POSSIBLE ABOUT THE EVENT. THE DEPARTMENT THEN ADVISES THE GROUP AS TO WHAT TYPE OF PERMITS ARE REQUIRED TO HOLD THEIR DEMONSTRATIONS.

EACH GROUP IS, SPECIFICALLY, ASKED WHETHER ANY CIVIL DISOBEDIENCE IS TO BE ANTICIPATED. CONSEQUENTLY, IF THE GROUP AFFIRMS, WE ATTEMPT TO OBTAIN AS MUCH INFORMATION AS TO THE NATURE OF THE VIOLATION; THE NUMBER OF PERSONS WHO WILL BE INVOLVED; WHETHER THE VIOLATORS WILL ACCEPT BOND OR CITATION RELEASE, AND WHETHER THE GROUP WILL BE COOPERATIVE DURING THE

BOOKING PROCESS. WE ALSO EXPRESS AN INTEREST IN WHETHER OR NOT THERE WILL BE ANY SPECIAL NEEDS OF THE DEMONSTRATORS, IF THERE WILL BE ANY HANDICAPPED PARTICIPANTS AND IF ANY SMALL CHILDREN WILL BE ACCOMPANYING THE ADULT DEMONSTRATORS.

AFTER OBTAINING AS MUCH INFORMATION AS POSSIBLE FROM THE ORGANIZATION, THE DEPARTMENT HOLDS STRATEGY MEETINGS THAT INCLUDE MPD, CAPITOL POLICE, PARK POLICE, AND THE SECRET SERVICE. ALSO PARTICIPATING IN THESE SESSIONS ARE MEMBERS OF THE U. S. ATTORNEY'S OFFICE AND THE D. C. CORPORATION COUNSEL.

DURING THESE MEETINGS, PLANS OF ACTION ARE DEVELOPED THAT WILL BE MOST SUITABLE TO THE SPECIAL CIRCUMSTANCES OF EACH DEMONSTRATING GROUP.

I SHOULD POINT OUT THAT IN ALL SITUATIONS THAT WILL INVOLVED AN ARREST, OUR PRIMARY FOCUS IS TO OBTAIN THE NECESSARY INFORMATION AND DETAILS TO ENSURE THAT ANY ARREST WE EXECUTE IS SUFFICIENTLY LEGAL TO RESULT IN A CONVICTION IN COURT.

I MIGHT ALSO ADD THAT ON MOST DAYS A REPRESENTATIVE OF TRANS AFRICA (THE LEAD GROUP FOR THE SOUTH AFRICAN ANTI-APARTHEID DEMONSTRATION) MEETS WITH THE MPD OFFICIAL IN CHARGE OF THE EMBASSY AND PROVIDES HIM WITH INFORMATION NECESSARY FOR BOOKING PERSONS TO BE ARRESTED ON THAT DAY.

BASED UPON THIS INFORMATION, A SPECIAL POLICE DETAIL IS THEN DEPLOYED AT THE SITE OF THE DEMONSTRATION TO GUARANTEE THE HIGHEST LEVEL OF PUBLIC SAFETY TO ALL PERSONS INVOLVED. AN ESSENTIAL OUTCOME IS THAT POLICE OVERTIME AND OTHER OPERATIONAL EXPENDITURES ARE MAINTANINED AT A MINIMUM.

SPEICIFICALLY, AT THE SOUTH AFRICAN EMBASSY, THE MANAGING OF THE DAILY ARRESTS IS AS FOLLOWS: A REPRESENTATIVE OF THE TRANS AFRICA ORGANIZATION CALLS THE SPECIAL OPERATION DIVISION EACH DAY ADVISING THEM OF HOW MANY ARRESTS ARE TO BE EXPECTED FOR THAT DAY.

AT THAT TIME THE COMMANDER OF THE SPECIAL EVENTS BRANCH DETERMINES HOW MANY OFFICERS WILL BE ASSIGNED TO THE DETAIL FOR THAT EVENING. A DETERMINATION IS ALSO MADE AS TO WHETHER OR NOT

THE ASSISTANCE OF THE PRISONER CONTROL UNIT WILL BE NEEDED FOR THAT EVENING.

GENERALLY, IF THE EXPECTED ARRESTS ARE 50 PERSONS OR LESS, THE ARRESTEES ARE TRANSPORTED TO THE SECOND DISTRICT POLICE STATION FOR PROCESSING.

HOWEVER, IF THERE ARE MORE THAN 50 PERSONS THEY ARE TURNED OVER TO PRISONER CONTROL (WHICH MUST BE ACTIVATED) AND TAKEN TO CELL BLOCK "B" FOR PROCESSING BY THAT UNIT. EACH ARRESTED PERSON IS BOOKED AND A POLICE FORM P.D. 255 IS PREPARED. ONE PROSECUTION REPORT IS MADE FOR EACH ARRESTS. EACH PERSON ARRESTED IS GIVEN THE OPPORTUNITY TO POST BOND; THOSE ELIGIBLE FOR CITATION RELEASE ARE PROCESSED AND RELEASED. THOSE WHO REFUSE BOND OR CITATION RELEASE ARE HELD OVERNIGHT AND PRESENTED (ALONG WITH THE P.D. 163) THE NEXT MORNING FOR COURT. THOSE WHO ARE RELEASED HAVE THEIR CASES PRESENTED TO THE U. S. ATTORNEY ON A FUTURE DATE.

IT IS MY BASIC BELIEF THAT POLICE, AS AN INSTRUMENTALITY, ARREST INDIVIDUALS NOT TO INHIBIT OR TO SUPPORT POLITICAL ACTION AND PROTEST BUT, FUNDAMENTALLY, TO ARREST THOSE INDIVIDUALS WHO MAKE A CONSCIENCE CHOICE TO VIOLATE THE LAW. I WOULD SAY THE PROTESTORS AT THE SOUTH AFRICAN EMBASSY ARE ORDERLY AND DO NOT REQUIRE AGGRESSIVE POLICE ACTION.

AS A RESULT, THE DEPARTMENT HAS SUCCESSFULLY BEEN ABLE TO ALTER MANPOWER LEVELS ACCORDING TO SCHEDULED EVENTS AS WELL AS MEETING THESE DEMANDS ON A DAILY BASIS RELATIVE TO NEED. OPERATIONALLY, THE PROCEDURES WE HAVE INSTITUTED HAVE SAVED MONEY AND CONTRIBUTED TO THE EFFICIENT UTILIZATION OF MANPOWER.

THANK YOU VERY MUCH.

CONCLUSION OF HEARINGS

Senator SPECTER. That concludes the hearings. The subcommittee will recess and reconvene at the call of the Chair.

[Whereupon, at 11:45 a.m., Tuesday, July 23, the hearings were concluded and the subcommittee was recessed, to reconvene at the call of the Chair.]

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